A MANUAL

OF THE

LAW SPECIALLY AFFECTING CATHOLICS.

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BY

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PREFACE.

THE object of this work is to provide for the use of Catholics a Manual of the law specially affecting their religion and their religious interests. The chapter on Existing Disabilities is a short one, but will, it is hoped, throw some light on the alleged disqualification of Catholics to fill the offices of Lord Chancellor of England and Lord Lieutenant of Ireland. The legal aspects of this question have not hitherto been publicly discussed except in the carefully considered answer given by Lord (then Sir John) Coleridge to a question put by the late Sir Colman O'Loghlen in the House of Commons in 1872. That answer has lain forgotten in the pages of Hansard, and was not referred to in the debate on Mr. Gladstone's Bill for the removal of the supposed disability in 1891. It is here reprinted, and forms the basis of the argument tending to show that no such disability exists. Of the remainder of the volume much has been derived directly from the pages of the statute book. With regard to such subjects as Education and Trusts and Bequests, the Authors' task has been mainly one of selection, and they desire to express their obligations to the writers of the standard treatises on these subjects. They desire also to acknowledge, with thanks, the permission of the Council of the Catholic Union of Great Britain, to use for the purposes of this work various documents preserved in the offices of the Union. They are indebted to his Honour Judge Bagshawe for his kindness in perusing their proof-sheets, and in favouring them with important suggestions. And they have received valuable assistance from Mr. Paul Strickland, of Lincoln's Inn, in preparing the chapter on Trusts and Bequests, and from Mr. Nevill Geary, of the Inner Temple, on the subject of the Marriage-Laws.

December 1*st*, 1892.

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TABLE OF CASES.

A MANUAL OF THE LAW SPECIALLY AFFECTING CATHOLICS.

CHAPTER I.

The Penal Laws.*

The great dividing line in the religious history of this country is the year 1535—the twenty-sixth year of the reign of Henry VIII. From the days of St. Augustine till then, England was in full communion with the See of Rome, and her laws recognised the spiritual supremacy of the Pope. The "Act concerning the King's Highness to be Supreme Head of the Church of England, and to have authority to reform and redress all errors, heresies, and abuses in the same" (26 Hen. 8, c. 1), severed the nation from the unity of Christendom, and transferred the Papal jurisdiction to "the Imperial Crown of this realm," with which, except during the brief reign of Philip and Mary, it has since remained united. In popular language, this fact is expressed by the statement that up to the year 1535 England was Catholic and has since been Protestant. And the statement is perfectly accurate. Mr. Bryce has well observed: "The whole fabric of medieval Christianity rested upon the idea of the Visible Church. Such a Church could be in nowise local or limited. To acquiesce in the establishment of National Churches would have appeared to those men, as it must always appear when scrutinised,

* The greater portion of this Introductory Chapter, which is from the pen of Mr. Lilly, was originally published in the *Dublin Review*, and is thence reprinted by the kind permission of the editor.

contrary to the nature of a religious body, opposed to the genius of Christianity. . . . . Had this plan, on which so many have dwelt with complacency in later times, been proposed either to the primitive Church in its adversity, or to the dominant Church of the ninth century, it would have been rejected with horror; but since there were as yet no nations, the plan was one which did not, and could not, present itself." * Unquestionably, the idea of the Church Catholic dominated the European mind from the very introduction of the Christian religion until the close of the Middle Ages. Protestantism represents—such is its inner meaning—the disallowance of that idea. The essence of the movement called the Reformation, in all the different forms which it assumed in various European countries, is not the denial of one or another article of the Catholic Creed, but the rejection of ecclesiastical unity and universality, and of the Supreme Pastorate which is the *Sacramentum Unitatis*. Hence the appropriateness of the name Protestant because it implied nothing positive and might be used, indifferently, by all who protested against and threw off the authority of the Church.†

The special characteristic of the English Reformation is that it attributed to the Crown the jurisdiction which it denied to the Pope. It is on this account that we have called the year 1535 the dividing line in the religious history of England. Archbishop Tait insists that what he terms "the national settlement" dates from the previous year, when by the Act of the 25 Hen. 8, c. 19, "appeals to Rome in spiritual causes were first forbidden, and the rule of appeal to the King, from the Archbishops' Courts, the principle of which has ever since been maintained, was finally settled." ‡ But the change wrought by Henry VIII. went far beyond this prohibition of appeals to the Apostolic See. It involved his assumption of the entire

* 'The Holy Roman Empire,' p. 95, eighth edition.

† On this subject see Möhler's 'Kirchengeschichte,' vol. iii. p. 132.

‡ Preface to Broderick and Freemantle's 'Ecclesiastical Judgments of the Privy Council,' p. 10. We quote Archbishop Tait's words as we find them. But, as a matter of fact, appeals to Rome were not first forbidden by this statute. They had been forbidden in "causes testamentary or matrimonial, divorces, tithes, oblations or obventions," by a statute of the previous year—viz., the 24 Hen. 8, c. 12.

spiritual jurisdiction, the whole ecclesiastical authority, previously exercised in this country by the Supreme Pontiff. It is declared by the 26 Hen. 8, c. 1, that "the King, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only Supreme Head on earth of the Church of England, called Anglicana Ecclesia, and shall have and enjoy, annexed and united to the Imperial crown of this realm, as well the style and title thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits and commodities to the said dignity of Supreme Head of the same Church belonging and appertaining: and shall have full power and authority, from time to time, to visit, repress, redress, reform, order, correct, restrain and amend all such errors, heresies, abuses, offences, contempts and enormities, whatsoever they be, which by any manner of spiritual authority or jurisdiction, ought or may lawfully be reformed, repressed, ordered, redressed, corrected, and restrained, or amended: any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary notwithstanding." "Every man," observes Professor Brewer,

> who cares to read the history of those times feels at once that [the Royal Supremacy] is *the* question; this is the keystone of the Reformation; all other topics dwindle into insignificance beside it. This is the real point at issue between the advocates of the old and the new system; this, and not purgatory, not pilgrimages, not transubstantiation. . . . . This has spread its broad shadow across the range of centuries. It has fallen like a thing of evil on Romanists and Puritans alike. If it brought More and Fisher to the scaffold in the reign of Henry, it wrung the hearts and wasted the life-blood of Cartwright and the Puritans in the reign of Elizabeth. If it hung like a sword over the heads of the Tudor bishops, and prevented all relapse to Rome, it equally drove out from the pale of the National Church every conscientious Nonconformist who was a zealous Protestant in everything with the exception of this one Article. It kept the Church obedient to the Sovereign, and to the first principles of the Reformation. . . . . No distinction [between civil and religious crimes] existed at the time in the mind either of Sovereign or of people; the King, as spiritual head of the Church, assumed to himself the right of punishing such offences, not as contrary to the laws of the State, but as contrary to what he was pleased to determine was the law of God—offences as much against his spiritual as against his

temporal power. He never stopped to consider how far this or that creed might be excused or condemned, and its asserters brought to the scaffold as rebels or as heretics. That was a distinction first set up by the subtle statesmen of the reign of Elizabeth, when persecution for religion was growing unpopular. It had no place in the mind of Henry. The passing of the Six Articles, and the punishment of those who transgressed them, the persecution of Tyndal, and the death of Frith and Barnes, all show this. When he transferred to himself the supremacy of the Church, he transferred with it all the powers which the Church had ever exercised for the punishment of heresy or disobedience to its authority. If the Pope was the Bishop of bishops, so was he; if the Pope could of himself determine controversies of faith, so did he. Whether the doctrine of purgatory, or the sacrament of penance, or the worship of saints were or were not to constitute part of the creed, and of the teachings of the Church of England, depended upon the King alone. It is true that he did not administer the sacraments and ordain priests and bishops; but if any man had questioned his power to do so, he would have incurred the penalty of high treason. "A bishop," says Cranmer, "may make a priest by the Scripture, and so may princes and governors also, and that by the authority of God committed to them." In common with other reformers, Cranmer looked upon all spiritual functions as absolutely dependent on the will of the King, as temporal commissions, like those of any other magistrate.*

It would be an error to regard the momentous change thus effected in 1535 as of sudden incidence. The contest between the Papal power and the regal power had been waged, with longer or briefer truces, from the days of the Norman Conquest.† One of its acutest phases was in the reign of the Second Henry, on whose behalf we find claims made, anticipating, by nearly four hundred years, the pretensions successfully vindicated by the Eighth. Reginald FitzUrse, when he was disputing with Becket, just before the murder, asked him from

* 'English Studies,' pp. 302–32.

† The first of "the statutes of præmunire and provisors" was passed in the thirty-fifth year of Edward I. Its object was to prevent the Court of Rome from presenting or collating to any bishopric or living in England. The Act commonly called "the statute of præmunire" is the 16 Ric. 2, c. 5, which provides that whoever procures at Rome or elsewhere any translations, processes, excommunications, bulls, instruments, which touch the King, shall be put out of the King's protection, and shall be attached by his body to answer to the King and his council. *Præmunire*, corrupted from *præmonere*, is the initial word in the first sentence of the writ to which it gives its name.

whom he had the archbishopric? Thomas replied, "The spirituals I have from God and my lord the Pope; the temporals and possessions from my lord the King." "Do you not," asked Reginald, "acknowledge that you hold the whole from the King?" "No," was the prelate's answer. "We have to render the King the things that are the King's, and to God the things that are God's." "The words of the Archbishop," writes Bishop Stubbs, "embody the commonly received idea; the words of Reginald, although they do not represent the theory of Henry II., contain the germ of the doctrine which was formulated under Henry VIII:" * a doctrine generally supposed to be set forth in the Oath of Homage taken by the Anglican bishops: "I acknowledge that I hold the said bishopric, as well the spiritualities as the temporalities thereof, only of your Majesty." † "The royal supremacy," writes Professor Brewer, "was now to triumph after years of effort, apparently fruitless and often purposeless. That which had been present to the English mind for centuries was now to come forward in a distinct consciousness, armed with a power that nothing could resist. Yet, that it should come forth in such a form is marvellous. All events had prepared the way for the King's temporal supremacy; opposition to Papal authority was familiar to men; but a spiritual supremacy, an ecclesiastical headship, as it separated Henry VIII. from all his predecessors by an immeasurable interval, so was it without precedent and at variance with all tradition." ‡

* 'Constitutional History,' vol. iii. p. 294.

† The late Mr. J. W. Lea in his very learned pamphlet, 'The Bishop's Oath of Homage,' combats this view, and maintains that the "spiritualities" mentioned in that formula "are simply and only the 'Bona Spiritualia,' the 'spiritual' portion of the worldly goods of the bishopric as a benefice." p. 42.

‡ 'Letters and State Papers, Foreign and Domestic, of the Reign of Henry VIII.,' vol. i. p. cvii. (Intro.). So in the 1 Philip and Mary, c. 8, it is asserted, "The title or style of supremacy or supreme head of the Church of England, and of Ireland, or of either of them, never was, nor could be, justly or lawfully attributed or acknowledged to any king or sovereign governor of this realm." Dodd has some very judicious remarks upon the "mistake of several Protestant lawyers, who pretended that King Henry VIII. did not assume unto himself any more ecclesiastical power than what had been claimed and practised by his predecessors in former days, both under the British, Saxon, and Norman periods." See his 'Church History of England,' part i. art. 3 (vol. i. p. 249, in Tierney's edition).

The explanation of this triumph of the Royal supremacy is largely supplied by the general course of events and tendencies of thought during the two preceding centuries of European history. In particular, it may be observed that the authority of the Apostolic See had been much impaired by the great schism. And although when that breach of Catholic unity had been definitely healed, the Papacy had put on the semblance of its former greatness, it never recovered its predominance in the European public order. There was, as Ranke has observed, "throughout all Christendom, in the South as well as in the North, a general struggle to curtail the rights of the Pope;" and "Royalty began to make far greater claims than it had ever made before." * In this country, the authority exercised by the Tudor Sovereigns was such, both in kind and degree, as it is very difficult for us, in these days, adequately to conceive of. "The prerogative was absolute," writes Professor Brewer, "both in theory and practice. . . . . Government was identified with the will of the Sovereign, his word was law for the conscience as well as the conduct of his subjects. . . . . Any wrong, any injustice, any royal violation of the law, however flagrant, was a more tolerable evil than disobedience or opposition to the will of the prince, however just or sacred the cause. For that, in the temper of the times, people had no sympathy; the will of the prince, however expressed, as Romanist or Protestant, in passing the Six Articles or beheading More, in divorcing Queen Katherine or marrying Anna Boleyn, was to be respected. Innocence itself was to plead guilty, or suffer as guilty if the King required it." † And this vast power was practically without check or limitation. The Wars of the Roses had swept away the old nobility, who, in the absence of constitutional restraints, kept down the extension of the royal prerogative, and the new race of ministers were the mere creatures of the Sovereign, usually taken from a low rank in life, flourishing in his smile, annihilated by his frown, made or unmade at his will or caprice. Again, the patrimony of the Crown was immense,

* 'Die Römischen Päpste,' vol. i. pp. 39, 42.

† 'Letters and Papers, Foreign and Domestic, &c.,' vol. ii. part i. p. cclxxiv. (Intro.).

and the servility of Parliament, together with the system of forced loans and benevolences, rendered its pecuniary resources almost limitless.* How utterly subservient Parliament was to the royal pleasure, how destitute of one spark of the spirit of freedom, how void of any, even the slightest, feeling for the liberties of the subject, a glance at the Statute-book is sufficient to show. Its functions were practically confined to registering the edicts of the Sovereign, and to voting the supplies which he required.† Nor was his power tempered by a force which in this age has to be reckoned with, even in despotic countries. "Public opinion" can hardly be said to have existed in the days of the Tudors. The influence most resembling it was that wielded by the ecclesiastical order. But under Henry VIII. this influence almost ceased to act as a check upon the authority of the Crown. Professor Brewer dates its total extinction as a barrier upon arbitrary power at the death of Wolsey.‡ At the end of the fifteenth century the Church in England, as in the greater part of Europe, was in a lamentable condition. There is a mass of evidence that multitudes of Christians lived in almost total ignorance of the doctrines and in almost complete neglect of the duties of their faith. The Pater Noster and Ave Maria formed the sum of the knowledge of their religion possessed by many; and not a few passed through the world without receiving any sacrament save that of Baptism. The spiritualty, from the head downwards, had fallen from their high estate. The religious were no longer animated by their first fervour, and among the secular clergy there was much corruption of life. Pope Adrian VI. has left on record his conviction that the troubles which he was called

* "The King had the entire and exclusive control of the money paid into the Exchequer. The country was called upon for loans and subsidies, and the Parliament determined the amount; but it never presumed to regulate the expenditure of the money so collected, or even dictate how it should be applied."—'Letters and Papers, &c.,' vol. ii. part i. p. cxciii.

† "The King was the only representative of the nation, Parliament was little more than an institution for granting subsidies and regulating the duties on hats and caps. No ambassador or political agent cared in the least what Parliament might or might not think of his conduct. . . . . His sole object was to please the King and perhaps his minister. . . . . The entire personality of the nation was wrapped up in the King."—*Ibid.* p. lxv.

‡ *Ibid.* p. cclxxiii. (Intro.).

to face had arisen "propter peccata hominum, maxime sacerdotum et Ecclesiæ prælatorum." In the Holy See itself, he declares, there had been, for many years past, "multa abominanda, abusus in spiritualibus, excessus in mandatis et omnia denique in perversum mutata." * Unquestionable is it that in most Continental countries Protestantism—to quote the words of Möhler—"arose, partly, from the opposition to much that was undeniably bad and defective in the Church." † The Anglican Reformation, indeed, it is not easy to trace to any religious motive. Lord Macaulay is well warranted when he states, "Of those who had any important share in bringing it about, Ridley is perhaps the only person who did not consider it a mere political job; and Ridley did not play a very important part." ‡ And the clergy in their low estate, with slight hold upon the people, and practically severed from the protection of the Holy See, § were unable to offer any effective resistance to the authors of the schism. Resist, indeed, they did. Nothing is more opposed to the fact than the assertion still made, from time to time, that the renunciation of the authority of the Pope was their free act, that their submission to the royal supremacy was voluntary. It is difficult to imagine more monstrous chicane than that by which the King involved them in the penalties of a *præmunire*—imprisonment for life and forfeiture of property—for submission to the legatine authority which he had himself, by royal warrant, permitted Cardinal Wolsey to exercise. And our annals record no grosser act of tyranny than his exacting from the Convocation of Canterbury, as the price of their pardon, a subsidy of £100,000—equal at least to a million of our money—together with their acknowledgment that he was "the singular protector,

* In his letter to his legate, Chieragato, as to which see Pallavicino, l. ii. c. vii. The original of the letter is given in 'Fasciculus Rerum Expetendarum et Fugiendarum,' printed in 1595.

† "Der Protestantismus enstand theils aus der Entgegensetzung gegen unläugbar viel Schlechtes und Fehlerhaftes in der Kirche, und darin besteht sein Gutes."—'Symbolik,' p. 11 (5th ed.).

‡ 'Works,' vol. v. p. 172.

§ See Professor Brewer's very able account of the affair of Dr. Standish. "In the reign of Henry VIII.," he observes, "the Papal authority had ceased to be more than a mere form, a decorum to be observed."—'Letters and State Papers, &c.,' vol. ii. part i. p. ccxxvi. (Intro.).

sole and supreme lord, and, as far as the law of Christ allows, also supreme head of the Church and clergy of England." * "The clergy," writes Mr. Gairdner, "were altogether helpless. Under the existing law of *præmunire* they were quite at the King's mercy. It was an engine that might be turned against them capriciously, on the most slender pretexts, and, knowing its power, they may well have been glad to purchase immunity for the future by a frank recognition of the supremacy to which they were already compelled to bow in practice." † Again, the denial of Convocation in 1534 that "the Bishop of Rome had any greater authority conferred upon him by God in Holy Scripture than any other foreign bishop," was merely the enforced answer to a royal question.‡ The terrorised priest-

* The Northern Convocation adopted the same language, and voted the King £18,840.—Lingard's 'History of England,' vol. ii. c. viii.

† 'Letters and Papers of Henry VIII.,' vol. v. p. 15. Mr. Gairdner had previously observed: "Even with the reservation contained in the words 'quantum per Christi legem licet,' the concession was made with considerable reluctance, but, at the Archbishop's suggestion, it was passed unanimously. It was repented almost as soon as it was made; for however theoretically defensible might be the title to which they had agreed, and whatever pains they might have taken to guard against misconstruction, the clergy could not but feel the moral disadvantage at which they now stood in having yielded at all."

‡ On this subject it is worth while to quote the following passage from the extremely able essay, by Dr. Lingard, "Did the Church of England Reform Herself?" contributed to the *Dublin Review* of May 1840 (vol. iii. of the First Series):

"To the Lower House of Convocation was proposed, by order of the King, the following question: 'Has any greater authority in this realm been given by God in the Scripture to the Bishop of Rome than to any foreign bishop?' The reader will observe the artful structure of this question. Avowedly, there is no direct mention of the Bishop of Rome in the Scripture, no specification of the spiritual authority given to the successor of St. Peter in particular; no, nor even of the authority given to the successors of the Apostles in general. On those subjects the Scripture is silent. Not one of the sacred writers has thought of describing in detail the plan of Church government which the Apostles established, to be observed after their death. For that we must have recourse, as the Oxford teachers admit, to tradition. Hence it was natural to expect that to confine the question to the doctrine expressly taught in the Scripture would serve the same purpose as the introduction of the qualifying clause, 'as far as allowed by the law of Christ,' had served in the recognition of the King's supremacy. Many a man of timid mind, though he might in reality admit the authority of the Pope, might reconcile the denial of it with his conscience by contending that he had only denied that it was directly taught in the Scripture. It was not, however, before the last day of the Session, after the Bills abrogating the Papal jurisdiction had passed the two Houses, and when the King made them the

hood dared not return any other. "It was as easy," writes Harpsfield, "for the King to overthrow this brittle and fragile clergy as it is for a lusty, sturdy, strong man to give his adversary a fall in wrestling whom he hath long kept in prison, with coarse and thin diet, and hard lodging withal." *

This is the true explanation of the great change effected by the Act of 26 Hen. 8, c. 1. The other religious legislation of that monarch may be regarded as preparatory to, or supplementary of that enactment. It is extremely probable, indeed we may take it as certain, that when Henry entered upon his contest with the Papacy in the matter of the divorce, he by no means contemplated the separation of his kingdom from the Holy See.† But we, judging after the event, can easily discern that the very existence of the Papal supremacy was involved in the King's matrimonial cause. Professor Brewer justly observes: "If Pope Clement had yielded to the menaces or flattery of the King and his ministers, if he had parted with any portion of his jurisdiction and authority at their desire, in so important a case as this, he would not only have sacrificed to his own wishes or personal convenience the rights and dignity of his office, but would have completely betrayed that ecclesiastical jurisdiction and order which he was bound to uphold, and of which he was the professed head and representative." ‡ And, indeed, it was

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law of the land by giving to them the royal assent, that the Lower House made its report to the Archbishop. Thirty-four members answered negatively, four affirmatively, one doubtfully. The same question was subsequently put to the two Universities, and from both were obtained such answers as the King required, from Cambridge on the 2nd of May, from Oxford on the 7th of June" (p. 345.).

* 'Narrative of the Divorce,' p. 96. (Printed by Lord Acton for private circulation.)

† Professor Brewer writes: "To this result he was brought by slow and silent steps. He had so long threatened to break with the Pope that he was compelled, at last, to make his own threats good. For his own purposes he had done so much to encourage attacks upon the Papacy, to question its dispensing power, to menace its authority, that to retrace his steps, had he felt inclined to attempt it, was impossible. The marriage with Anne Boleyn completed the recoil. He had stooped down from monarchy to match with a plebeian. He had forfeited his rank among the rulers of Christendom. It mattered little to take one step further, and sacrifice his place among Christian rulers, whose dignity and rule were endorsed and authenticated by the Pope."—'Letters and State Papers, &c.,' vol. iv. p. dcxliv. (Intro.).

‡ *Ibid.* p. dcxxxi. (Intro.).

evident to one of the wisest and best of men found in those evil days—"a light shining in a dark place"—that the course of events could not but lead to this issue, Whence, and of what kind, is the Pope's jurisdiction? When Sir Thomas More, we read, had been found guilty on the indictment charging him with having traitorously endeavoured to deprive the King of his title of Head of the Church, he said: "I have, by the grace of God, been always a Catholic, never out of the communion of the Roman Pontiff. But I had heard it said, at times, that the authority of the Roman Pontiff was certainly lawful and to be respected, but still an authority derived from human law, and not standing upon a divine prescription. Then, when I observed that public affairs were so ordered that the source of the power of the Roman Pontiff would necessarily be examined, I gave myself up to a most diligent examination of the question for the space of seven years, and found that the authority of the Roman Pontiff which you rashly—I will not use stronger language—have set aside, is not only lawful, to be respected, and necessary, but also founded on the divine law and prescription. That is my opinion; that is the belief in which, by the grace of God, I shall die." *

The statutes which prepared the way for, and led up to, Henry VIII.'s Act of Supremacy are seven in number. The first of them (21 Hen. 8, c. 13) prohibits, under pecuniary penalties, the obtaining from the Apostolic See of licences for pluralities or non-residence. The second (23 Hen. 8, c. 9) forbids the citation of a person "out of the diocese where he or she dwelleth, except in certain cases." The third (23 Hen. 8, c. 26) is entitled "concerning restraint of payment of annates to the See of Rome," and is specially worthy of note as being, at the same time, an attempt to intimidate and to bribe the Supreme Pontiff. It enacts that if any prelate hereafter should presume to pay first fruits to the See of Rome, he should forfeit his personalities to the King, and the profits of his See as long as he held it, and that if the requisite Bulls for his consecration were, in consequence, denied, he might be con-

* Sandar, 'De Schismate Anglicano,' book i. c. 16. We avail ourselves of Mr. David Lewis's translation.

secrated without them; and it authorised the King to disregard any ecclesiastical censure of "our Holy Father, the Pope, or any of his successors," and to cause divine service to be continued in spite of the same. But, further, it permitted each bishop to pay for the expediting of his Bulls, fees after the rate of five per cent. on the amount of his yearly income, and *empowered the King to compound with "His Holiness" for the moderation of annates, and by letters patent, which in this case should have the force of law, to give or withhold his assent to this Act, and at his pleasure to suspend, modify, annul, or enforce it.* This Act was, in fact, as Dr. Lingard has called it, a "political experiment to try the resolution of the Pontiff."

The experiment failed, and in the next year the royal assent was given to the Act by letters patent. In this year also was passed a statute (24 Hen. 8, c. 12) forbidding, under the penalty of *præmunire*, appeals to Rome in "causes testamentary, causes of matrimony and divorce, tithes, oblations and obventions," and requiring the clergy to continue their ministrations, in spite of ecclesiastical censures from Rome, under pain of one year's imprisonment. It provides that no appeal shall be made from the Archbishop's Court, save in cases touching the King, when the appeal shall lie to the Upper House of Convocation, and subjects persons appealing contrary to the Act to the penalties of *præmunire*. The "Act for the Submission of the clergy to the King's Majesty," passed in the next session of Parliament (25 Hen. 8, c. 19), went still further, and forbade, under the like penalties, *any appeal whatever* "to the Bishop or See of Rome," "in any causes or matters happening to be in contention, and having their commencement and beginning in any of the courts" of the realm. Appeals from the Archbishop's Court, it provides, shall be to the King's Majesty, in the King's Court of Chancery, and shall be determined by commissioners to be appointed by the King.* It further recites the submission which had been extorted from the clergy in the previous year, forbids them to make

* This occasional tribunal obtained the name of the Court of Delegates. Its functions are now exercised by the Judicial Committee of the Privy Council.

constitutions save with the King's licence, and empowers * the King to appoint thirty-two persons to examine former canons, and to approve or repeal them with the King's assent; such canons, if not contrary to law, or opposed to the royal prerogative, to be meanwhile in force. Another Act of the same year (25 Hen. 8, c. 20) utterly abolishes annates, forbids, under the penalties of *præmunire*, the presentation of bishops or archbishops to "the Bishop of Rome, otherwise called the Pope," and the procuring from him of Bulls for their consecration, and establishes the method still existing in the Anglican Church of electing, confirming, and consecrating bishops. The next Act of the same year forbids, under the same penalties, the King's subjects to sue to the Pope or the Roman See for "licences, dispensations, compositions, faculties, grants, rescripts, delegacies, or any other instruments or writings," to go abroad for any visitations, congregations, or assembly for religion, or to maintain, allow, admit, or obey any process from Rome.

The headship of the Church in England, taken away by these enactments from the Pope, was, in the following year, annexed to the Crown by the Act of Supremacy (26 Hen. 8, c. 1), which completed the religious revolution. We have, in a previous page, quoted the words wherein the statute declares the King the supreme head on earth of the Church of England, and sets forth his power and authority in that capacity. "Of this Act," Dr. Lingard well observes, "it may be remarked: 1st. That it differed greatly from the recognition originally extorted from the clergy. That recognition confined the royal supremacy within the limits prescribed 'by the law of Christ'; this declaration affirmed it absolutely, and without qualification. 2nd. That, by giving to the King all the pre-eminence and jurisdiction belonging to the dignity of the supreme head of the Church, it invested him with all that authority which the Pope had hitherto claimed and exercised in England, for no other supreme head had hitherto been known in the English Church. 3rd. That it also invested him with episcopal power and jurisdiction; not that he pretended to administer the sacraments—

* This power was never exercised, but appears to be still possessed by the Crown.

he had not made such progress in the new doctrine as to believe with Archbishop Cranmer that ordination was unnecessary—but he claimed the right of directing those who had been ordained to such ministry, of superintending their acts and teaching, and of correcting and redressing all their errors, abuses, and offences, which by any manner of spiritual authority or jurisdiction ought to be corrected or redressed, that is, all such as were committed by any overt act; for such as were committed *sine scandalo* must be left to the justice of God." *

What full proof Henry VIII. made of his supreme ecclesiastical ministry is matter of history, known to every schoolboy, and need not be narrated here. The importance which he attached to it may be inferred from the high place assigned by him to Thomas Cromwell, who was appointed, in 1535, his "Vicegerent, Vicar-General, and Principal Official," "with full power to exercise and execute all and every that authority and jurisdiction appertaining to himself as head of the Church;" the first place, namely, in Convocation, and "a place on the same form but above the Archbishop of Canterbury, in the House of Lords." The Vicar-General's authority was confined to ecclesiastical discipline. The settlement of doctrine Henry took under his own personal care, as stands recorded in the "Act for abolishing of diversity of opinions in certain articles concerning Christian Religion"; commonly called the statute of the Six Articles.† It is there related how the King, as "supreme head immediately under God, of the whole Church and congregation of England," not only caused the questions of Transubstantiation, Communion in both kinds, Sacerdotal Celibacy, Vows of Chastity, Private Masses, and Auricular Confession, to be "debated, argued, and reasoned by the archbishops, bishops, and other learned men of his clergy," but "also most graciously vouchsafed, in his own princely person, to descend and come unto his High Court of Parliament and Council, and there, like a prince of most high prudence, and no less learning, opened and declared many things of high learning and great knowledge, touching the said articles, matters and questions, for

* *Dublin Review* (First Series), vol. iii. p. 340.

† 31 Hen. 8, c. 14.

an unity to be had in the same." Soon after Henry, "of his bountiful clemency, appointed a commission of bishops and doctors, to declare the articles of faith, and such other expedient points, as with his grace's advice and consent should be thought needful"; and in the next session of Parliament it was enacted that all declarations, definitions and ordinances which should be set forth by them, with His Majesty's advice, and *confirmed* by his letters patent, should be in all and every point, limitation and circumstance, by all His Majesty's subjects, and all persons resident in his dominions, fully *believed*, obeyed and observed, under the penalties therein to be comprised (32 Hen. 8, c. 26). "By this enactment," observes Dr. Lingard, "the religious belief of every Englishman was laid at the King's feet. He named the commissioners; he regulated their proceedings by his advice; he reviewed their decisions; and, if he confirmed them by letters patent under the Great Seal, they became, from that moment, the doctrines of the English Church, which every man was bound to believe, under such penalties as might be assigned. And what were these penalties? A little later it was enacted * that if any man should teach or maintain any matter contrary to the godly instructions and determinations which had been, or should be, thus set forth by His Majesty, he should, in case he were a layman, for the first offence, recant and be imprisoned twenty days; for the second, abjure the realm; and for the third, suffer the forfeiture of his goods, and imprisonment for life: but if he were a clergyman, he should, for the first offence, be permitted to recant; on his refusal, or second offence, should abjure and bear a faggot; and on his refusal again, or third offence, should be adjudged a heretic and suffer the pain of death by burning, with the forfeiture to the king of all his goods and chattels." †

"All laws and statutes made against the See Apostolic of Rome since the twentieth year of King Henry the Eighth" were abolished by the 1 and 2 Philip and Mary, c. 8, which "enacted and declared the Pope's Holiness and See Apostolic to be restored, and to have and enjoy such authority, pre-

* By the 34 & 35 Hen. 8, c. 1.
† *Dublin Review* (First Series), vol. iii. p. 350.

eminence, and jurisdiction as His Holiness used and exercised, or might lawfully have used and exercised by authority of his supremacy," before that date. By the 1 Elizabeth, c. 1, this statute was repealed, and of the seven Acts against the Roman Pontiff, passed between the 21st and 26th years of Henry VIII., of which we have given an account, the last six were revived, as were also certain anti-papal statutes passed subsequently to the enactment of Henry's Act of Supremacy (26 Hen. 8, c. 1). That Act was not revived, no doubt because Elizabeth, as a woman, shrank from assuming the title of Supreme Head of the Church bestowed by it upon the Sovereign. But although she did not take to herself that title, she took all the authority implied therein, by the first Act of her reign, which is called "An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual; and abolishing all foreign Powers repugnant to the same." The Act provides that the spiritual and ecclesiastical power, jurisdiction, superiority, authority, pre-eminence, privilege of every foreign prince, person, prelate, state, or potentate, shall be clearly abolished out of this realm; that such jurisdictions, privileges, superiorities, and pre-eminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be exercised or used, for the visitation of the ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever be united and annexed to the imperial Crown: and that the power of exercising this authority by delegates to be appointed under the Great Seal, shall remain to the Queen and her successors for ever. It forbids any one to affirm, hold, stand with, set forth, maintain, or defend, whether in writing or print, by word, deed, or act, the spiritual or ecclesiastical authority, pre-eminence, power, or jurisdiction of any foreign prince, prelate, person, state, or potentate; and ordains that every person offending against this prohibition shall, for a first offence, suffer forfeiture of all real and personal property; for a second offence, shall incur the penalties of *præmunire;* and for a third offence shall be guilty of high

treason, and suffer accordingly. It provides, moreover, that an oath recognising the Queen's Highness as "the only supreme governor of this realm, as well in all spiritual and ecclesiastical things, or causes, as temporal," shall be taken by all holding office in Church and State, and by all laymen suing out livery for their lands, or doing homage to the Crown. By this Act the Queen was constituted the supreme ecclesiastical authority in the Church of England. And, accordingly, in her commission to her prelates appointed to perform the ceremony of Archbishop Parker's confirmation we find this clause: "Supplentes nihilominus, suprema auctoritate nostra regia, ex mero motu ac certa scientia nostris, si quid aut in his, quæ juxta mandatum nostrum predictum per vos fient aut in vobis, aut vestrum aliquo conditione, statu, facultate vestris ad præmissa perficienda desit aut deerit eorum quæ per statuta hujus regni nostri aut per leges ecclesiasticas in hac parte requiruntur, aut necessaria sunt, temporis ratione et rerum necessitate id postulante." * So also in the "Act declaring the making and consecrating of the Archbishops and Bishops of this realm to be good, lawful, and perfect" (8 Eliz. c. 1), it is recited that "Her Highness, by her supreme power and authority, hath dispensed with all causes or doubts of any imperfection or disability, that can or may, in any wise, be objected against the same, as by Her Majesty's letters patent, remaining of record, more plainly will appear:" whence, "it is very evident and apparent that no cause of scruple, ambiguity, or doubt can or may justly be objected against the said elections, confirmations, or consecrations."

As the first Act of Queen Elizabeth was directed to the extirpation of the Catholic religion, which she found professed in this country upon her accession, so the second had for its object the establishment of Protestantism. It is entitled "An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments" (1 Eliz. c. 2), and is commonly called the Act of Uniformity. It provides that "all and singular ministers in any cathedral, or parish church, or

* The document is given in Haddan's edition of Bramhall's Works, vol. iii. p. 178.

other place, within this realm of England, shall be bounden to say and use the matins, evensong, celebration of the Lord's Supper, and administration of each of the Sacraments, and all the common and open prayer in such order and form as is mentioned in the book intituled 'The Book of Common Prayer and administration of the Sacraments and other rites and ceremonies in the Church of England,' authorised by Act of Parliament, holden in the fifth and sixth years of our late sovereign Lord King Edward the Sixth," with a few unimportant variations. The penalties which it provides for any minister who disobeys are, for the first offence, the forfeit of a year's profit of such one of his spiritual benefices or promotions as it shall please the Queen to appoint, and imprisonment for six months; for a second offence, deprivation, *ipso facto*, of all his spiritual promotions and imprisonment for a year; and for a third offence, imprisonment during life. But in case the delinquent had no spiritual promotions, the first offence involved imprisonment for six months, and the second, imprisonment for life. The Act further requires all the Queen's subjects, having no lawful or reasonable excuse for absence, to resort to their parish church on Sundays and holidays, for the new service, "upon pain of punishment by the censures of the Church, and also upon pain that every person so offending shall forfeit, for every such offence, twelve pence."

Queen Elizabeth's Acts of Supremacy and Uniformity, as Hallam has observed, "form the basis of that restrictive code of laws which pressed so heavily, for more than two centuries, upon the adherents to the Romish Church." * We shall now proceed † to give an account of the superstructure raised upon this foundation.

First, then, by several statutes, Catholics offending against the Act of Supremacy were made liable to capital and other punishments as *traitors*. We have already seen that by this enactment whoever maintained "in writing, or by print, by word, deed, or act, the spiritual or ecclesiastical authority of

* 'Constitutional History,' vol. i. c. 3.

† In what follows concerning the offences of spiritual treason and recusancy, free use has been made of Mr. Anstey's learned work, 'A Guide to the Laws of England affecting Roman Catholics.'

any foreign prelate," should be deemed, on a third conviction, guilty of high treason. A statute passed four years afterwards (5 Eliz. c. 1) expressly named the Roman Pontiff, and provided that any of the subjects of the realm who should be convicted of having, within a year previously, "by writing, cyphering, printing, preaching or teaching, deed or act," extolled or defended the authority of the Bishop of Rome within the realm, or of having wittingly attributed such to that See, should incur the penalties of *præmunire* for a first offence, and upon conviction of a second should be guilty of high treason.* The statute imposes the same punishment for declining to take the oath of supremacy within a year after conviction.

The next of the statutes of spiritual treason is the 13 Eliz. c. 2. The using, or putting in ure, within the realm, any bill, writing, or instrument of absolution, or reconciliation of persons to the See of Rome, the obtaining of any instrument whatever from that See, and the assuring, or even promising, under colour of such instrument to reconcile any person, and the receiving such absolution and reconciliation, are by this Act declared to be high treason, and punishable as such. All aiders, comforters or maintainers of offenders, after the fact, are made liable to the pains of *præmunire*, and all persons to whom such instruments have been offered and who shall not signify the same to the Council within six weeks afterwards, incur the penalties of misprison of treason.

The 23 Eliz. c. 1, refers to the same subject, but is far more ample in its comprehension. It enacts the penalties of high treason against all persons "who have, or shall have, or shall pretend to have, power, or shall by any ways or means put in practice, to absolve, persuade, or withdraw" any within the

* Mr. Anstey points out that the decisions under this statute very greatly extended its application. "It has been holden that the mere act of commending a book in defence of the Papal supremacy, or allowing it to be good, after having read it, and even after having heard a report of its being written in a foreign country, is an extolling or setting forth of the Papal authority within the meaning of the statute. It has even been holden (although two of the judges dissented from that construction) that a judge may ask a prisoner after conviction of, and condemnation for a first offence, whether he be still of the same opinion, and that if he answer in the affirmative he is guilty of high treason as having advisedly maintained the Papal power a second time" (p. 31).

realm "from their natural obedience," or to withdraw them "for that intent" from the established religion to the Catholic religion, or to move them to promise any obedience to the See of Rome, to be had or used within the Queen's dominions; and aiders or abettors not disclosing the offence to a justice of the peace, or higher officer, for twenty days after knowledge thereof, are declared guilty of misprison of treason.

The penalties of high treason were enacted with greater rigour by 3 Jac. 1, c. 4, against persons in like manner absolving, persuading or withdrawing others, or being themselves persuaded or withdrawn, "either upon the seas, or beyond the seas, or in any other place within the dominion of the King's Majesty, his heirs or successors," and against all their "procurers and counsellors, aiders, and maintainers."

The 27 Eliz. c. 2,* was especially directed against the Catholic clergy. It enacted that no Jesuit or seminary priest, or religious or ecclesiastical person, born within this realm, and ordained, or professed, by authority derived from the See of Rome, should come into or remain in this realm, under penalty of high treason, unless licensed by the bishop of the diocese and two county justices, and that only in case of bodily infirmity, to remain in their actual abode for a period not exceeding six months; and it provided the same penalty against all laymen educated in any Jesuit College, or seminary beyond the seas, who should not return to the realm, and take the oath of supremacy within six months, after royal proclamation made in that behalf in the city of London.

So much as to the offence of spiritual treason devised against those who adhered to the Catholic religion in this country. We now come to the offence of recusancy, invented in aid of the Act of Uniformity. Popish recusants were Catholics who forbore or refused to attend the new religious worship prescribed

* Very many trials under this sanguinary statute are reported in the 'Selection of Cases from the State Trials,' edited, in 1882, by Mr. J. W. Willis-Bund, for the Syndics of the Cambridge University Press. The refusal of Charles I. to enforce the death penalty in some cases was one of the principal grievances of the Long Parliament, vol. i., p. 480. Under Charles II., in addition to the numerous victims of the so-called Popish Plot, some fifty priests were about the same time convicted and executed under this statute on the sole charge of being priests—vol. ii., 1157.

by that Act. After conviction they were termed Popish recusants convict. The Statutes of Recusancy, properly so called, are 1 Eliz. c. 2; 23 Eliz. c. 1; 29 Eliz. c. 6; 35 Eliz. c. 2; 3 Jac. 1, c. 5; 7 Jac. 1, c. 6; and 3 Car. 1, c. 2. But besides these, there is a multitude of clauses to be found among the penal laws passed for restraint of Popery, which declare that other offences of an entirely new order shall be deemed acts of Popish recusancy, and that those convicted of them shall be deemed Popish recusants convict. Thus, in the Toleration Act (1 W. & M. c. 18) it is enacted that every justice of the peace may require any person that "goes to any meeting for the exercise of religion to subscribe the declaration" of the 30 Charles 2, st. 2, c. 1, against Popery; and also to take the oaths of allegiance and supremacy, and upon refusal thereof may commit him to prison without bail: and that if he shall upon a second tender of the section refuse to make and subscribe the said declaration, he shall be then and there recorded for a Popish recusant convict, and suffer accordingly. This style of expression is used as a convenient mode of stating the penalties to which it is intended to subject certain offenders, just as it has frequently been enacted that certain other offenders shall incur the pains and forfeitures of *præmunire*. The expression, in neither case, is intended to signify that the specific offenders belong to the class noticed by the statutes of recusancy, or those of *præmunire*, but simply that they shall be punishable in like manner.

The pains of recusancy were various. They may be classed as Forfeitures and Disabilities.

As to *Forfeitures*, we have already seen that the Act of Uniformity imposed a fine of 12*d.* for a first offence. The 23 Eliz. c. 1, enacts an additional forfeiture of £20 a month for forbearing the established worship. And the 3 Jac. 1, c. 4, empowers the King to receive £20 a month, and to seize two parts in three of all the recusant's lands, leases, and farms. It further enacts that if any Popish recusant convict shall conform, and shall not afterwards, within one year from his conformity, receive the sacrament in his own parish church, or if there be none such, in the next adjoining church, he shall forfeit for the

first year £20, for the second year £40, and for every succeeding year £60 until he have received the sacrament. Moreover, under this statute, every person who shall retain in his service, or shall relieve, or harbour, any servant, layman, or stranger, who shall not repair to church for a month together, shall forfeit £10 for every month.

The 3 Jac. 1, c. 5, also provides that every Popish recusant convict married to a woman, not being an heiress, otherwise than in open church or chapel, according to the orders of the Church of England, by a minister lawfully authorised, shall forfeit £100. And that if she be an heiress, he shall be disabled from having any interest in her lands or hereditaments as tenant by the courtesy of England. And it denies to every female recusant convict either dower or freebench in any of the freeholds or copyholds of her husband.

By the same statute the omission of baptism at the hands "of a lawful minister according to the laws of this realm," for one month after the birth of the child, subjects the father, being a Popish recusant, to the penalty of £100 for every such offence: and should he be dead within the month, the liability falls upon the mother.

It likewise imposes the penalty of £20 upon the personal representatives of a Popish recusant, not being excommunicate, or the persons concerned in the burial of such person, if the corpse be buried elsewhere than in the church or churchyard, or "not according to the ecclesiastical laws of this realm."

Finally, as to married women, this act provides that every Popish recusant convict, being the widow of one not convicted of recusancy, who does not conform to the established worship, and receive the sacrament according to law, during one whole year after her husband's death, shall forfeit to the Crown two-thirds of her jointure and two-thirds of her dower during her life, and all share in her husband's goods and chattels, and be disabled to be his executrix and administratrix: and that if a married woman do not conform, and receive the sacrament according to law, within three months after conviction of Popish recusancy, she shall be imprisoned until conformity. But if her husband shall pay to the Crown ten pounds for every

month of her nonconformity, or, at his option, yield into the King's hand a third of his lands and tenements, she may, so long as the money is paid or the lands are retained, remain at liberty.*

First among the *Disabilities* which attached to recusancy must be reckoned excommunication. The 3 Jac. 1, c. 5, and the 1 W. & M. st. 1, c. 8, enact that every Popish recusant convict shall stand, to all intents and purposes, disabled as a person lawfully excommunicated: that is to say, incapable of suing, of being a witness, surety, administrator, attorney, or procurator for any person; of acting as executor, or of receiving Christian burial; and liable, as Chief Justice Coke pointed out in a celebrated case,† to being dealt with, according to the rigour of the law, by writ of *excommunicato capiendo*. This statute of James I. further enacts that no Popish recusant convict shall practise the law or physic, or exercise any public office or charge in the commonwealth, either in person or by deputy; and that the husbands of Popish recusants convict shall lie under the like disabilities unless they, their children above the age of nine years, and their servants conform to the established religion.

By the 35 Eliz. c. 2, and the 3 Jac. 1, c. 5, every Popish recusant convict, above the age of sixteen, must repair to his usual abode, or if he have none, to his native place, and not remove above five miles from thence without a written licence from the Queen or three privy councillors, or without a special written licence, granted under the hand and seal of four local justices, with the assent in writing of the bishop, lord-lieutenant, or deputy lieutenant. And twenty days after his return he must notify it, with his true name, and present himself to the parish minister and the town constable, who shall enter these matters in a book to be kept for that purpose. The penalties of

* James I., according to his own account, received a net income of £36,000 a year from the fines of Popish recusants ('Hardwicke Papers,' vol. i. p. 446).

† *The Attorney-General* v. *Griffiths and others*, 2 Bulst. 155. It has been thought that the words "a person lawfully excommunicated" mean nothing more than disabling the convict to sue, and this view is taken in Hawkins' 'Pleas of the Crown' and Bacon's 'Abridgment.' But the better opinion seems to be that they imposed upon Popish recusants convict *all* the disabilities of excommunication. The point is discussed at length by Anstey, pp. 39–43.

not returning to such place of abode, or native place, or of removing thence more than five miles without licence, were forfeiture of goods and chattels, lands, tenements, and hereditaments, and all rents and annuities during the offender's life. If he had not an inheritance of any kind of the clear amount of twenty marks, nor goods and chattels above the value of £20, and did not within three months after apprehension conform to the Established Church, he was bound upon his corporal oath, at the requisition of any two justices of the peace, or of the coroner of the county, to abjure the realm for ever and to depart out of it at once. The punishment of the convict for refusing to abjure, or for not departing out of the realm after abjuration, or for coming again into it, was death.

The 3 Jac. 1, c. 5, also disables every person being a Popish recusant convict to present to any benefice, prebend or any ecclesiastical living, or to nominate to any free school, hospital, or donative; or to grant the assurance of any benefice, prebend or other ecclesiastical living; and devolves his rights, in such respects, upon the Universities of Oxford and Cambridge, according to the local site of the benefice. It may here be added that the 1 W. & M. c. 26, extends this disability to every person who shall refuse to make the declaration against Popery, prescribed by 30 Car. 2, st. 2, c. 1, "as fully as if such person were a Popish recusant convict."

Further, this statute enacts that no Popish recusant convict shall come into the court or house where the King or his heir apparent to the Crown shall be, unless he be commanded so to do by the King, upon pain of £100. And the 30 Car. 2, st. 2, c. 1, enacts that every person convicted of Popish recusancy, who shall come advisedly into or remain in the presence of the King or Queen, or shall come into the court or house, where they, or any of them, reside shall be disabled to hold or execute any office or place of profit or trust, civil or military, in the realm, or its islands or plantations, to sit or vote in either House of Parliament, or to make a proxy in the Peers; to sue or use any action, bill, plaint, or information at law, or suit in equity, or to be guardian, executor, or administrator, legatee, or donee; and shall forfeit for every such offence £500.

The same statute enacts that no Popish recusant, indicted or convicted of recusancy, shall remain within ten miles of London after ten days from the indictment or conviction, under pain of £100: that all armour, gunpowder, and munition that any Popish recusant convict shall have in his house or elsewhere, except such necessary weapons as may be allowed him for defence of his person or dwelling, may be taken from him by warrant of four justices of the peace, and kept at his cost at such place as the justices shall appoint, and that if he hinder the delivery thereof to the justices he shall be imprisoned for three months; and further that any two justices of the peace and the mayor, bailiffs, and chief officers of cities and towns corporate may search for Popish books and reliques in the houses and lodgings of Popish recusants convict, and may, at their discretion, deface or burn any altar, pix, beads, pictures, or such-like Popish relique, or any Popish book which they may find; and if it be a crucifix or other relique of any price, the same must be defaced at the General Quarter Sessions of the county, and then restored to the owner.

It remains to speak of certain penal enactments directed against Catholics generally, and not specially against those whom the law qualified as traitors and recusants. The 23 Eliz. c. 1, enacts that whoever shall say or sing Mass shall forfeit 200 marks and be committed to gaol for a year and thenceforth until he have paid the fine; and subjects every person who shall hear Mass to the penalty of a year's imprisonment and a fine of 100 marks. But the sanguinary Act of the 27 Eliz. c. 2, already spoken of, which enacted the death penalty against Catholic priests, practically superseded this statute. The 11 & 12 Will. 3, c. 4, "for a further remedy against the growth of Popery, over and beyond the good laws already made," imposes the penalty of imprisonment for life upon any Popish bishop, priest, or Jesuit saying Mass, or exercising any other part of a Popish bishop or priest's office within these realms or the actual dominions thereof, unless he be an alien, residing in a foreign ambassador's dwelling-house as chaplain, and registered as such in the Secretary of State's office.

Catholic books and other instruments of devotion were also

rigidly prohibited. The 13 Eliz. c. 2, enacts that if any person shall bring into the realm any token or thing called by the name "Agnus Dei," or any crosses, pictures, beads, or such-like vain and superstitious things from the Bishop or See of Rome, or from any person authorised by, or claiming authority from him to hallow the same, and shall offer the same to any subject of this realm to be worn and used, he, and every person who shall receive the same, shall incur a *præmunire*. And by the 3 Jac. 1, c. 5, no person shall bring from beyond the seas, nor shall print, sell, or buy any Popish primers, ladies' psalters, manuals, rosaries, Popish catechisms, missals, breviaries, portals, legends and lives of saints, containing superstitious matter, printed or written in any language whatsoever, nor any other superstitious books, printed or written in the English tongue, on pain of 40*s.* for every book, and the books to be burned.

Catholic education was entirely disallowed. The 11 & 12 Will. 3, c. 4, enacts that any Papist who shall keep school, or assume the education, government or boarding of youth, within the realm or its actual dominions, shall, upon conviction, be sentenced to perpetual imprisonment. This penalty is expressed to be "over and beyond the good laws already made:" that is to say, the 23 Eliz. c. 1, which forbids the keeping or maintaining of any schoolmaster who does not repair to the Established Church, or is not allowed by the Protestant bishop, under a fine of £10 per month, and subjects "such schoolmaster or teacher" to imprisonment for a year; the 1 Jac. 1, c. 4, which imposes a fine of 40*s.* a day upon any one who, without special licence from the bishop, keeps school or is a schoolmaster, except it be in the house of some man or woman of gentle degree not being a recusant; and the Act of Uniformity (13 & 14 Car. 2, c. 4), which requires tutors and schoolmasters, in private houses, besides obtaining the bishop's licence, to conform to the Established Church, under penalty of three months' imprisonment for the first offence, and the like imprisonment for every subsequent offence, and a fine of £5 to the Crown.

Nor were Catholics, thus debarred from educating their children at home in their own religion, allowed to send them for such education abroad. The 27 Eliz. c. 2, makes punishable as a

præmunire the sending of relief, directly or indirectly, to any Jesuit college or foreign seminary, or person of or in the same; and the 1 Jac. 1, c. 4, enacts that any subject of the King sending any child or other person under their government to any such college or seminary, with intent to reside in the same, or to be instructed, persuaded, or strengthened in the Popish religion, shall for every such offence forfeit £100. Under this statute the person so sent is disabled to inherit, purchase, take, or enjoy any real or personal estate whatsover in England or its dominions, and all trusts, confidences, or interests whatsoever for his or her benefit are utterly void.

In the reign of Charles I. a further act (3 Car. 1, c. 2) was passed on this subject. It enacts that no one shall send any child or other person out of the realm to a foreign country, to the intent to enter, or to be resident, or trained up in any priory, abbey, nunnery, Popish university, college, or school, or house of Jesuits, or priests, or private popish family, there to be instructed, persuaded, or strengthened in the Popish religion. It likewise forbids the sending of money or other thing for the maintenance of any child or person so sent, or for the relief of any priory, abbey, nunnery, college, school and religious house soever. Conviction of either of these offences, it further provides, shall disable the party to sue at law or in equity, to be committee of any ward, executor, administrator, or donee (by deed) for any person, or to bear any office within the realm; and such convict shall forfeit all his goods and chattels; and during his life, or the continuance of his non-compliance, all his lands and hereditaments, rents, annuities, office, and estates of freehold are to be forfeited.

It should here be noted that by the 11 & 12 Will. 3, c. 4, if any Popish parent, in order to compel his Protestant child to change his religion, shall refuse to allow him a fitting maintenance suitable to the degree and ability of such parent, and to the age and education of such child, the Lord Chancellor shall make order therein. And the Court of Chancery would also superintend the education of such Protestant child, and would impose restrictions on the access and correspondence of its parents (*Blake* v. *Leigh*, Amb. 306).

In order effectually to exclude Catholics from the Legislature, the 30 Car. 2, st. 2, provides that no one shall sit in either House until he shall first take the oaths of allegiance and supremacy (to which the 1 George 1, st. 2, c. 13, adds the oath of abjuration), and make and subscribe a declaration, denying transubstantiation, and asserting that the invocation and adoration of the Virgin Mary, or any other saint, and the sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous. This statute further provides that every such offender shall be adjudged a Popish recusant convict to all intents and purposes, and shall forfeit and suffer as such; and it subjects to all the pains, penalties, forfeitures and disabilities of the Act, any sworn servant to the King, who should not within the time limited by law take the appointed oath, and should come into the presence of the King or Queen. And the 7 & 8 Will. 3, c. 27, provides that every person who refuses to take the oaths of allegiance and supremacy, when lawfully tendered, shall be liable to suffer as a Popish recusant convict; and that no person who shall refuse the said oath shall be admitted to give a vote at the election of any member of Parliament.

The Corporation and Test Acts* applied of course to Catholics as to all dissidents from the Established Church. The last-mentioned of these enactments provides that every person who shall be admitted into any office, civil or military, shall within three months after his admittance receive the sacrament of the Lord's Supper according to the usage of the Church of England, on the Lord's Day, immediately after divine service and sermon; and if he shall neglect or refuse to do so, he shall be disabled to hold such office, and the same shall be void.

By 7 & 8 Will. 3, c. 24, the professions of counsellor-at-law, barrister, attorney, solicitor, and notary, were closed to Catholics.

Thus were Catholics debarred from public life at home, nor were they permitted to take service abroad. To do so without having previously taken the oath of obedience, is by the

* 13 Car. 2, st. 2, c. 1, and 25 Car. 2, c. 2.

3 Jac. 1, c. 4, declared to be a felony. The same statute further enacts, upon pain of felony, that no person bearing any military office shall go out of the realm to serve any foreign prince, unless he shall become bound, with two sureties, in the sum of £20 at least, that he will not, at any time, be reconciled to the Pope or See of Rome.

Catholics were excluded from succession to the throne by the 1 W. & M. st. 2, c. 2, which enacts that every person who shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded from, and be for ever incapable to inherit or enjoy, the Crown and Government of this realm: and in such case the people shall be absolved of their allegiance, and the Crown shall descend to and be enjoyed by such person, being a Protestant, as should have inherited and enjoyed the same, in case the person so reconciled, holding communion, or professing or marrying as aforesaid, were naturally dead.

In the first year of William and Mary it was thought necessary to prohibit Catholics from residing within ten miles of London, and an Act of Parliament (1 W. & M. c. 9) was passed empowering justices to tender to reputed Papists "the oath appointed by law." Any one who refused it, and yet remained within ten miles of London, was to forfeit and suffer as a Popish recusant convict. Another Act of the same year (1 W. & M. c. 15) provides that no suspected Papist who shall neglect to take the oath appointed by law, when tendered to him by two justices of the peace, and who shall not appear before them upon notice from one authorised under their hands and seals, shall keep any arms, ammunition, or horse above the value of £5, in his possession, and in that of any other person to his use (other than such as shall be allowed him by the sessions for defence of his house and person). Any two justices may authorise by warrant any person to search for all such arms, ammunition, and horses in the daytime, with the assistance of the constable or his deputy or tithing-man, and to seize them for the King's use. And if any person shall conceal such arms, ammunition, or horses, he shall be imprisoned for three months,

and shall forfeit to the king treble the value of such arms, ammunition, or horse.

A later statute of the same reign (11 & 12 Will. 3, c. 4) imposed heavy disabilities on Catholics in respect of real property. It provides that any person educated in the Popish religion, or professing the same, unless within six months after attaining the age of eighteen, he or she take the oaths of allegiance and supremacy and subscribe the declaration in 30 Car. 2, st. 2, shall in respect of himself or herself only, and not for and in respect of any of his or her heirs or posterity, be disabled and made incapable to inherit or take by descent, devise, or limitation, in possession, reversion, or remainder any lands, tenements, or hereditaments; and that until he or she do take such oaths, and make such subscriptions, the next of kin, being a Protestant, shall have and enjoy the said lands, &c., without being accountable for the profits, but only for wilful waste. It further provides that, after April 10, 1700, every Papist shall be disabled and made incapable to purchase either in his or her own name, or in the name of any person or persons, to his or her use, or in trust for him or her, any manors, lands, profits out of lands, tenements, rents, terms, or hereditaments; and that all and singular estates, terms, and any other interests or profits whatsoever out of lands to be made, suffered, or done for the use or behoof of, or upon trust for, any such person, shall be utterly void and of none effect. And the 3 Geo. 1, c. 28, after enacting that sales by Papists to Protestant purchasers for full valuable consideration shall be good, unless some person entitled to enter by previous statute has already asserted his claim, goes on to lay down that no manner of lands, tenements, or hereditaments shall pass from any Papist by any deed or will, unless such deed within six months after the date, and such will within six months after the death of the testator, be enrolled in one of the King's courts of record at Westminster, or in the county before the *custos rotulorum*, two justices, and the clerk of the peace.

Finally, the 1 Geo. 1, st. 2, c. 50, provides that "all manors, lands, tenements, rents, tithes, pensions, portions, annuities, and all other hereditaments whatsoever, and all mortgages, securities,

sums of money, goods, chattels, and estates, which have been given, granted, devised, bequeathed, or settled upon trust, or to the intent that the same, or the profits or proceeds thereof, shall be applied to any abbey, priory, convent, nunnery, college of Jesuits, seminary or school for the education of youth in the Romish religion in Great Britain, or elsewhere, or to any other Popish or superstitious uses, shall be forfeited to the King for the use of the public."

Such were the laws devised to crush out the Catholic religion in England. Montesquieu remarks that "they are so rigorous, though not professedly of the sanguinary kind, as to do all the hurt that can possibly be done in cold blood." "In answer to this it may be observed," says Blackstone, "what foreigners, who judge only from our Statute-book, are not fully apprised of, that these laws are seldom exerted to their utmost rigour." * No doubt this was so; or Catholicism would have disappeared from the country. But however laxly administered at certain times, or in certain cases, there these statutes were, hanging, like the sword of Damocles, for well-nigh three centuries, over the devoted heads of English Catholics, whose property, whose liberty, whose lives, were at the mercy of any common informer. We now proceed to trace briefly the successive steps by which this penal code was removed from the pages of the Statute Book, reserving such fragments as still remain, to be dealt with in the next chapter under the head of Existing Disabilities. In *practice* this result was effected by the Relief Acts of 1778 and 1792, and the Emancipation Act of 1829: but only in practice, for the relief given by these Acts was limited to Catholics taking the prescribed Roman Catholic Oath, and the whole of the penal laws were left in force, at least in theory, against Catholics who neglected to comply with this test. It was not until the present reign that the penal laws themselves ceased to disfigure the pages of the Statute-Book, and that the repeal of the Roman Catholic Oath by 34 & 35 Vict. c. 48, placed Catholics in this country in a condition of almost complete equality with their fellow-subjects.

* 'Commentaries,' book iv. c. 4. These laws were still in force when Blackstone wrote.

The Act of 1778 (18 Geo. 3 c. 60) relieved Catholics taking the prescribed oath from some of the worst provisions of the 11 & 12 Will. 3, c. 4. It repealed the sections as to apprehending, taking, or prosecuting Popish Bishops, Priests, and Jesuits, and relieved both them and other Catholics from the punishment of perpetual imprisonment for keeping a school. It also enabled Catholics to purchase and inherit land, and repealed the section allowing a Protestant heir to enter and enjoy the estate of his Catholic kinsman.

These were the provisions which, when extended shortly afterwards to Scotland, became the occasion of the Gordon riots.

The Act of 1791 (31 Geo. 3, c. 32) was much more extensive and far-reaching. No Catholic taking the oath, was thenceforward to be prosecuted for being a Papist, or for being educated in the Popish religion, or for hearing or saying mass, or for being a priest or deacon, or for entering or belonging to any ecclesiastical order or community in the Church of Rome, or for assisting at or performing any Catholic rites or ceremonies. To the provisions of this Statute regarding the registration of Catholic places of worship and of the Catholic clergy we shall have occasion to refer in a subsequent chapter.*

Catholics were no longer to be summoned to take the oath of Supremacy, or to be removed from London, and the legislation of George I. requiring them to register their estates and wills was repealed absolutely. Lastly the professions of counsellor at law, barrister, attorney, solicitor, and notary, which had been closed to Catholics by the 7 & 8 Will. 3, c. 24, were now again opened to them upon taking the prescribed oath.

Such were the principal relieving clauses of the Act, which further provided (sec. 17) that nothing in that Act contained should make it lawful for Roman Catholics to found, endow, or establish any school, academy or college within the realm or its actual dominions, and enacted that whatever uses, trusts, and dispositions of real or personal property were therefore "deemed superstitious or unlawful," should still continue to be so deemed notwithstanding the Act. The effect of this section in connec-

* See p. 49.

tion with subsequent legislation will have to be considered in a later chapter.*

We come next to the Emancipation Act (10 Geo. 4, c. 7), which is set out fully in Appendix A. Its general effect was to open public life to Catholics, taking the prescribed oath, to enable them to sit in parliament, to vote at elections, and to fill all the offices of state with a few exceptions. At the same time it imposed certain restrictions upon them with a view of safeguarding the interests of Protestantism. These provisions, so far as they are still operative, will be considered in the next chapter.

The important Act of 2 & 3 Will. 4, c. 115, putting Catholic charities on the same footing as those of Protestant dissenters, will be considered in the chapter on Charitable Trusts and Bequests.

Among the statutes which formally repealed the penal laws the most important are 9 & 10 Vict. c. 59, and the various Statute Law Revision Acts.

Finally, in 1871, the Promissory Oaths Act (34 & 35 Vict. c. 48) abolished the invidious Roman Catholic oath; and, also, as we shall see in the next chapter, removed the last trace of those formidable tests, which had so long excluded Catholics from all the emoluments of place and power.

* See p. 138.

CHAPTER II.

Existing Disabilities.

It is proposed in this chapter to consider the existing disabilities to which Catholics are subject in this country, excepting such as restrict the full disposition of their property for religious purposes. The latter are among the most important of all, but they will be discussed more conveniently at a later stage in connection with the general law relating to religious and charitable trusts and bequests. Excluding them for the moment, Catholic disabilities existing or alleged to exist at the present time may be classified under five heads.

I. Affecting the tenure of the Crown.
II. Affecting, or alleged to affect, certain high offices of State.
III. Affecting the Established Church.
IV. Affecting religious communities of men.
V. Other disabilities.

I. THE CROWN.

No member of the reigning house, who is a Catholic or has married a Catholic, can succeed to the throne, and the Sovereign on becoming a Catholic or marrying a Catholic thereby forfeits the Crown. This article of the Constitution, commonly known as the Protestant Succession, was enacted in the Bill of Rights and confirmed by the Act of Settlement.

Section 9 of the Bill of Rights (1 W. & M. sess. 2, c. 2) is as follows: "And whereas it hath been found by experience that it is inconsistent with the welfare and safety of this Protestant kingdom to be governed by a Popish Prince, or by any King or Queen marrying a Papist, the said Lords Spiritual and Temporal and Commons do further pray that it may be enacted that all and every person or persons that is, are, or shall be reconciled, or shall hold communion with the See or Church of Rome, or shall profess

the Popish religion, or shall marry a Papist, shall be excluded and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case the people of these realms shall be and are hereby absolved from their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing, or marrying as aforesaid, were naturally dead."

The language of the Act of Settlement (12 & 13 Will. 3, c. 2, s. 2) conferring the succession on the descendants of the Electress Sophia being Protestants, does not materially differ from that of the above section. It is further enacted, s. 3 (1): "That whosoever shall hereafter come to the possession of the Crown of England, shall join in communion with the Church of England as by law established."

The words, "reconciled to or hold communion with the See or Church of Rome" in the above section of the Bill of Rights should, it appears, be construed as applying only to a religious reconciliation and communion with the Pope, and a recognition of his spiritual authority. In 1847 and 1848 the proposed establishment of diplomatic relations with the Holy See was opposed in Parliament, as being in contravention of the above words of the Statute, and in the latter year an Act (11 & 12 Vict. c. 108*), entitled "An Act for enabling Her Majesty to establish and maintain diplomatic relations with the Sovereign of the Roman States," was passed by the government of the day. The Act recites that "doubts exist whether Her Majesty can lawfully establish and maintain diplomatic relations with the Sovereign of the Roman States," but Lord Lansdowne on behalf of the Government in the House of Lords expressly disclaimed any belief that such doubts were well founded. The first section provides that it shall be lawful for Her Majesty to establish and maintain diplomatic relations, and to hold diplomatic intercourse with "the Sovereign of the Roman States," a description which was substituted for "the Sovereign Pontiff" while the bill was passing through the House of Lords.

* See Appendix B.

The second section of the Act, also introduced in the Lords, did more to hinder, than the first to facilitate, the establishment of such relations by providing that it should not be lawful "to receive at the Court of London as Ambassador, Envoy Extraordinary, Minister Plenipotentiary or other Diplomatic Agent accredited by the Sovereign of the Roman States, any person in Holy Orders in the Church of Rome, or a Jesuit, or member of any other religious order, community, or society of the Church of Rome bound by monastic or religious vows." This provision excluded all the ordinary diplomatic agents of the Holy See, and no regular diplomatic relations were established under the authority of the statute. The British Government continued as before to be represented at Rome by an unofficial agent, who was kept on for some years after the loss of the Temporal Power, an event which, according to the opinion of Lord (then Sir John) Coleridge, the Attorney-General in 1872,* did not affect the power of the Crown to enter into and maintain diplomatic relations with the Holy See.

II. CERTAIN HIGH OFFICES OF STATE.

Certain high offices have next to be dealt with, which were not opened to Catholics by the Emancipation Act, but which have since been materially affected by legislation abolishing the tests which prevented Catholics from filling them.

The excepting clause of the Emancipation Act (10 Geo. 4, c. 7, s. 12) is as follows: "Provided, also, that nothing herein contained shall extend or be construed to extend to enable any person or persons professing the Roman Catholic religion to hold or exercise the office of guardians and justices of the United Kingdom, or of regent of the United Kingdom, under whatever name, style, or title such office may be constituted, nor to enable any person, otherwise than he is now by law enabled, to hold or enjoy the office of Lord High Chancellor, Lord Keeper, Lord Commissioner of the Great Seal of Great Britain (or Ireland), or the office of Lord-Lieutenant of Ireland, or His Majesty's High Commissioner to the General Assembly of the Church of Scotland."

The office of regent does not appear to stand upon a different

* Hansard, vol. 213, p. 158.

footing from the other offices mentioned in the section, but it has been customary in Regency Acts to make the tenure of the regency dependent on the same conditions regarding religion as the tenure of the Crown. The office of Lord Chancellor of Ireland has been opened to Catholics by the Act of 1867 (30 & 31 Vict. c. 75); and the office of Lord High Commissioner to the General Assembly of the Church of Scotland is one which no Catholic would desire to fill. The practical importance of the question is therefore confined to the offices of Lord High Chancellor of England and Lord-Lieutenant of Ireland.

Is there at present in force any impediment to prevent a Catholic from filling these offices? In 1872 the present Lord Chief Justice, then Sir John Coleridge and Attorney-General, gave it as his opinion that there is not.

This careful and considered opinion, to which attention is specially invited, is reprinted from Hansard* in Appendix C. It was given in answer to a question from the late Sir Colman O'Loghlen, who had brought in a Bill for the purpose of opening these offices to Catholics. The opinion of the first Law Officer of the Crown, speaking under such circumstances, is entitled to very great weight, and it would seem that no reason has ever been adduced for doubting the correctness of the conclusion arrived at, except the fact mentioned in the opinion that "a right honourable friend," not further identified, differed on a vital point of the case. The "right honourable friend" in question cannot have been the Solicitor-General, Sir George Jessel, who was not then a Privy Councillor; and the presumption is rather that this most distinguished lawyer concurred in the view taken by his colleague. Acting on the Attorney-General's opinion, Sir Colman O'Loghlen did not further proceed with his Bill, and the matter may be said to have rested there until the introduction of Mr. Gladstone's Bill in 1891.† That Bill proceeded on the assumption that the state of the law was doubtful, but no attempt was made on either side to show that such doubt was well-founded, or to refute by serious argument the opinion given by the present Lord Chief Justice when Attorney-General.

* Hansard, vol. 211, p. 280. † Ib., vol. 349, p. 1734.

As explained by Sir John Coleridge, the Emancipation Act as regards these offices left things precisely as they were. Before the passing of that Act the two great barriers that practically excluded Catholics from public life, were the Oaths of Allegiance, Abjuration, and Supremacy, and the Declaration against Transubstantiation. These tests were imposed on the holders of all important offices, and no Catholic could conscientiously take them. The Emancipation Act substituted a modified oath for Catholics, and by section 1 absolutely abolished the Declaration against Transubstantiation except as to the reserved offices. Section 1, after reciting that

"by various Acts certain oaths and declarations, commonly called the declaration against transubstantiation, and the declaration against transubstantiation and the invocation of saints and the sacrifice of the mass, as practised in the Church of Rome, are, or may be required to be taken, made, and subscribed by the subjects of His Majesty, as qualifications for sitting and voting in Parliament, and for the enjoyment of certain offices, franchises, and civil rights,"

went on to enact that—

"From and after the passing of this Act all such parts of the said Acts as require the said declarations, or either of them, to be made or subscribed by any of His Majesty's subjects, as a qualification for sitting and voting in Parliament, or for the exercise or enjoyment of any office, franchise, or civil rights, be, and the same are (save as hereinafter provided and excepted) hereby repealed."

The effect of section 12, already quoted, was to leave the holders of the reserved offices still subject to the Declaration which was otherwise abolished by section 1, and also to the Oaths of Allegiance, Abjuration, and Supremacy.

The barrier of the oaths has now admittedly been removed. In 1858 the Oaths of Allegiance, Abjuration, and Supremacy were consolidated by 21 & 22 Vict. c. 48, but, as the consolidated oath retained the declaration that no foreign prince or prelate had or ought to have any jurisdiction, ecclesiastical or spiritual, within the realm, no Catholic could conscientiously take it. Ten years later, in 1868, 31 & 32 Vict. c. 72 was passed, repealing the consolidated oath, and substituting a new form of oath, which Catholics could conscientiously take.

It is not necessary to refer in detail to the old statutes imposing the Declaration,* the last of which were expressly repealed by the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48). So long as they were in force anyone, whether Catholic or Protestant, entering on any of the reserved offices and neglecting to make the Declaration in the prescribed form, was liable on conviction to have his tenure of the office declared void, to forfeit £500, and to be incapable of suing at law or in equity, or of being a guardian or executor, or of any legacy or deed of gift, or of filling any office for the future. The steps by which these statutes were repealed are clearly explained in Sir John Coleridge's opinion.

The question now appears narrowed down to this; can Catholics appointed to the offices of Lord Chancellor and Lord-Lieutenant be called upon to make the Declaration against Transubstantiation? For many years after the passing of the Emancipation Act, the Declaration was administered to all holders of these offices. Complaint was frequently made that the terms of the Declaration were offensive to the feelings of Catholics, whose duty obliged them to assist at such ceremonies as the swearing in of the Lord-Lieutenant; and to remove this grievance, a short Act was passed in 1867 (30 & 31 Vict. c. 62), the effect of which was to relieve Protestant holders of the offices from the necessity of making the Declaration, whilst leaving it to operate as a barrier of exclusion against Catholics. Such at least would appear to be the effect of the statute, which must be examined in detail, as it is upon its construction that the whole question now at issue turns.

It is entitled—

"An Act to abolish a certain declaration, commonly called the Declaration against Transubstantiation, the Invocation of Saints, and the sacrifice of the Mass, as practised in the Church of Rome, and to render it unnecessary to take, make, or subscribe the same as a qualification for the exercise or enjoyment of any civil office, franchise, or right."

* 25 Car. 2, c. 2, Rep. 26 & 27 Vict. c. 125 (1863); 30 Car. 2, st. 2, c. 2, Rep. 29 and 30 Vict. c. 19, s. 6 (1866), and 1 Geo. 1, st. 2, c. 13, and 9 Geo. 2, c. 26 Rep. 34 & 35 Vict. c. 48 (1871).

The preamble merely recites that the Declaration is still required in certain cases, and that "it is expedient to alter the law in this respect, and to abolish the said Declaration."

Then follow the two sections of the Act:—

"1. From and after the passing of this Act all such parts of the said Acts as require the said Declaration to be taken, made, or subscribed by any of Her Majesty's subjects as a qualification for the exercise or enjoyment of any civil office, franchise, or right, shall be, and the same are, hereby repealed, and it shall not be obligatory for any person to take, make, or subscribe the said declaration as a qualification for the exercise or enjoyment of any civil office, right, or franchise within the realm.

2. Nothing in this Act contained shall be construed to enable any person professing the Roman Catholic religion to exercise or enjoy any civil office, franchise, or right, for the exercise or enjoyment of which, making, taking, or subscribing the declaration by this Act abolished, is now by law a necessary qualification, or any other civil office, franchise, or right from which he is now by law excluded."

In the opinion of Sir John Coleridge the effect of the proviso regarding Catholics in the second section of the Act was to limit the operation of the first or repealing section in such a way that the old statutes imposing the Declaration were not repealed absolutely, but were left in full force against Catholics only. On this view of the Act of 1867, which best gives effect to the intention of the legislature to repeal an unnecessary and offensive ceremony, whilst at the same time leaving Catholics in precisely the same position as they stood before, Protestants could no longer be called upon to make the Declaration, but Catholics appointed to the reserved offices would still be liable to make the Declaration, or to incur all the penalties provided by the old statutes for neglecting to do so.

If this be so, Catholics continued to be debarred from filling the reserved offices, until the Promissory Oaths Act of 1871 (34 & 35 Vict. c. 48) repealed the last of the old statutes imposing the Declaration (see Sir John Coleridge's opinion in Appendix C) without any reserve, and thus removed the last conscientious barrier in their way.

Another view is, however, mentioned by Sir John Coleridge,

as suggested by a right honourable friend, which would have the effect of still excluding Catholics—that the first section of the Act of 1867 repealed the old statutes absolutely, and that the second section re-enacted them *de novo* against Catholics, in which case they would be still in force, as the Act of 1867 is unrepealed. Against this view it must be observed that the Act of 1867 is a relieving not a disabling Act. It does not purport to impose any new disability on Catholics, or to enact anything against them as such, and no such disability can be implied, but must be enacted clearly and expressly.

The first section does, indeed, purport to repeal all parts of Acts imposing the Declaration, thus following the exact wording of section 1 of the Emancipation Act quoted above, but by a well-known rule of construction, the whole Act must be read together; and, therefore, the first section must be read subject to the proviso in the second section; and effect is best given to the second section by interpreting it as having left the old statutes still in force against Catholics. Again, the Act of 1867 contains no provisions as to tendering the Declaration to Catholics appointed to the offices, such as we should expect to find if it were itself imposing the Declaration afresh; on the contrary, it would leave the old Acts to fix how the Declaration is to be made and what is to be the penalty for accepting office without making it. This is in itself a strong indication that it was not the intention of Parliament to go through the useless and objectless proceeding of repealing the Declaration in one section merely to re-enact it—not directly, but by reference—in the next. On the contrary, and as was to be expected, the precedent of the Emancipation Act was closely followed in further limiting the operation of the old Acts without wholly repealing them. The Emancipation Act (s. 1) repealed all parts of Acts imposing the Declaration, except as regarded the reserved offices. The Act of 1867 further repealed all such parts of Acts imposing the Declaration, except as regarded Catholics appointed to the reserved offices. The Act of 1871 repealed the old Acts imposing the Declaration altogether, without any reserve, and thus removed the last barrier excluding Catholics.

A third construction, not entertained by Sir John Cole-

ridge, that the Act of 1867 repealed the old statutes absolutely, and did not re-enact them against Catholics, is open to serious objection. It is true that when the Act was passed the abjuration clause of the oath of 1858, affirming that no foreign prince or potentate had or ought to have any jurisdiction, ecclesiastical or spiritual, within this realm, was still in force, and formed quite as effective a barrier against Catholics as the Declaration itself, though not expressed in terms offensive to their religious feelings. The second section of the Act of 1867 might therefore possibly be explained as having been inserted *ex abundanti cautela* by the legislature to make it clear that the effect of the Act was not to open the reserved offices to Catholics. On this view, Catholics continued excluded until the Act of 1868 (31 & 32 Vict. c. 78) substituted a new oath of allegiance omitting the abjuration clause above referred to. This construction, however, gives very little effect to the second section of the Act of 1867. On the other hand, the view that the Act of 1867, whilst by the first section repealing the Declaration, by the second section imposed an absolute disability on Catholics, independent of any oath or declaration, is open to even graver objection. The second section only provides that nothing in the Act shall be construed to *enable* a Catholic to fill any office in regard to which the Declaration was then required, or from which he was then by law excluded. It does not purport to impose any new disability, and no such penal enactment can be extracted by implication from the terms of a professedly enabling statute. It is further to be observed that, even prior to the passing of the Act, Catholics were not *by law* excluded from any of the offices in question. There was merely imposed on all holders, Catholic and Protestant alike, a declaration and an oath, which no Catholic could conscientiously make; and a Catholic who went through the form of making them, however insincerely and dishonestly, would have satisfied the statutes, just as a Protestant who omitted, though from no conscientious objections, to do so, would have incurred all the penalties provided against the omission.

Such a new legal disability would have been something quite different from the conscientious barrier till then interposed

between Catholics and the reserved offices, and was in no way called for, as, even on the view that the Act repealed the Declaration absolutely, the terms of the oath of 1858 still continued to exclude Catholics as effectively as the Declaration itself had ever done.

The choice, it is submitted, must lie between the construction adopted by Sir John Coleridge, that the Act of 1867 left the old statutes in force, and the construction that the legislature in repealing the old statutes intended to rely exclusively on the abjuration clause of the oath of allegiance for the purpose of excluding Catholics. The former construction, as we have seen, best gives effect to the wording of the second section of the Act, but on either view there is now no barrier interposed between Catholics and the offices in question.

It is to be regretted that the legal aspects of the question were completely ignored in the debate on Mr. Gladstone's Bill, and that the attention of the House was not called to the opinion of the present Lord Chief Justice.

III. THE ESTABLISHED CHURCH.

Catholics are prevented by various statutes from presenting to livings of which they happen to be patrons, and as each vacancy arises, the right of presentation is vested, but for that occasion only, in the University of Cambridge or the University of Oxford, according as the living is situated to the north or to the south of the river Trent. Otherwise, the Catholic owner of the advowson remains the legal patron.

This disability was first imposed on "Popish recusants convict" by 3 Jac. 1, c. 5, ss. 18–21, and was extended by 1 W. & M. c. 26 (an Act to vest in the two Universities the presentation of Benefices belonging to Papists), s. 4, to all persons refusing to make the Declaration against Transubstantiation; and it was further enacted by s. 4 of the same statute, that the trustees, mortgagees, or grantees of any Popish recusant convict should forfeit £500, if they presented without giving notice in writing of the avoidance to the University within three months after the avoidance.

13 Anne, c. 13, further extended the disability to "every Papist or person making profession of the Popish religion, and every mortgagee, trustee, or person any ways entrusted by or for such Papist," and imposed it in respect to "presenting, collating, or nominating to any benefice, prebend, or ecclesiastical living, school, hospital, or donative." All such presentations, and everything done in pursuance of them, were rendered void.

The above statute of Anne has been made the subject of a recent decision in the Arches Court of Canterbury, and in the Privy Council.* In that case a Catholic had nominated to a Cambridge college a fit person for presentation to one of the college livings, in pursuance of powers conferred upon him as heir of a deceased benefactor by the college statutes. The college presented the nominee, but the Bishop having refused to institute him, on the ground that the nominator was a Catholic, it was held that the nomination was bad under the above statute of Anne. On the alleged ground that the above enactment had been evaded by Catholic owners of advowsons who transferred them without valuable consideration to other persons, "upon confidence only," that such persons would present, nominate, etc., in accordance with the wishes of the grantors, it was further provided by 11 Geo. 2, c. 17, that "all grants made by any Papist, or by any mortgagee, or trustee on his behalf, secret or avowed, of any advowson, right of presentation, nomination, or donation of and to any benefice, prebend, or ecclesiastical living, school, hospital, or donative," should be null and void, excepting all *bonâ fide* grants, "for a full and valuable consideration to Protestant purchasers, and only for the benefit of such purchasers."

The Emancipation Act has certain other provisions on the subject. Sec. 15 provides that nothing in the Act shall enable any Catholic member of a lay body corporate "to give a vote at, or in any manner to join in the election, presentation or appointment, of any person to any ecclesiastical benefice whatsoever, or any office or place belonging to or connected with the United Church of England and Ireland, or the Church of Scot-

* *Boyer* v. *Bishop of Norwich* (1892), p. 41.

land, being in the gift, patronage of disposal of such lay corporate body.

Section 16 (see Appendix A) provides that the Act shall not enable any Catholic to fill any office or dignity in the churches of England, Ireland, and Scotland; or in any Ecclesiastic Court, or in any Court of Appeal from such courts; or in *any office or place in the Universities of Oxford and Cambridge* (this was repealed in 1871 by 34 & 35 Vict. c. 26), or in the colleges of Eton, Westminster, or Winchester, or any college or school within the realm.

Section 14 of the Relief Act of 1791 (31 Geo. 3, c. 32) expressly provides that "no person professing the Roman Catholic religion shall obtain or hold the membership of any college or school of royal foundation, or of any other endowed college or school for the education of youths, or shall keep a school in either of the Universities of Oxford or Cambridge.

Section 17 of the Emancipation Act provides that where the right of presentation to any living belongs to an office in the gift of the Crown, and the holder of the office is a Catholic, the right of presentation for the time being shall devolve upon and be exercised by the Archbishop of Canterbury.*

Sect. 18 provides that it shall not be lawful for any Catholic to advise the Crown concerning the appointment or disposal of any office or preferment in the English, Irish, or Scotch churches. Any infringement of this section to be a high misdemeanour punishable by a perpetual disability from filling any office under the Crown.

Sect. 24 imposes a penalty of £100 upon any person, other than the person authorised by law, "who shall assume, or use the name, style or title of archbishop of any province, bishop of any bishopric, or dean of any deanery in England or Ireland."

It is unnecessary to do more than allude to the Ecclesiastical Titles Act (14 & 15 Vict. c. 50), which contained still more stringent provisions against the assumption by Catholics of

* When Mr. Matthews was appointed Home Secretary in 1886 it was arranged that the ecclesiastical patronage belonging to the Crown, but administered by the Home Secretary, should be exercised by the First Lord of the Treasury during Mr. Matthews's tenure of office.—Hansard, vol. 349, p. 1747.

ecclesiastical titles. Passed in order to satisfy the clamour against Papal aggression excited by the restoration of the hierarchy, its provisions remained a dead letter, and it was repealed during Mr. Gladstone's first ministry by 34 & 35 Vict. c. 53.

IV. RELIGIOUS COMMUNITIES OF MEN.

The Emancipation Act of 1829 was not only a relieving but also a disabling Act, and we have now to deal with the provisions of ss. 28–38, which imposed fresh disabilities upon religious communities of men bound by monastic or religious vows, involving the withdrawal of the protection which had been extended to them on the same terms as to other Catholics by the Relief Act of 1791. The object of these clauses is set forth in the preamble of the 28th section, which recites:—

"That Jesuits and members of other religious orders or societies of the Church of Rome, bound by monastic or religious vows, are resident within the United Kingdom, and it is expedient to make provision for the *gradual suppression and final prohibition of the same therein.*"

It is hardly necessary to say that no steps have been taken to give effect to these clauses, which were probably designed as a sop to the no-Popery feelings of the opponents of the Bill; but as they are still allowed to remain on the statute book, and as they have the serious effect of disabling religious orders of men from holding property, it is necessary to deal with them.

Sect. 28 (see Appendix) requires all male regulars to be registered within six months of the passing of the Act.

Sect. 29 forbids any male regular to come into the kingdom after the passing of the Act, under penalty of banishment for life.

Sect. 30 excepts British subjects, who happen to be out of the country at the date of the passing of the Act, from the last section.

Sect. 31 empowers the Secretary of State to grant licences to Jesuits and other male regulars to come into the United Kingdom and remain there for six months or under; any such licensee not departing within twenty days after the expiration of the licence to be guilty of a misdemeanour, and be banished

for life. No such licences are to be granted by a Catholic Secretary of State.

Sect. 32 provides that a return of the licences so granted shall be annually laid before Parliament.

The following sections prohibit the admission of new members of religious communities of men after the passing of the Act.

Sect. 33 enacts that any one admitting a new member of any order, shall in England be guilty of a misdemeanour, and in Scotland be punished by fine and imprisonment.

Sect. 34 makes it a misdemeanour punishable by banishment for life to be so admitted.

Sect. 35 empowers the Crown to convey out of the kingdom any person sentenced to be banished under the Act, who does not depart within thirty days of such sentence.

Lastly, section 36 provides that any person banished under the Act, who is found at large in the United Kingdom without some lawful cause, three months after sentence, shall on conviction be transported for life.

It is to be observed that these provisions extend only to "Jesuits and members of other religious orders, communities, or societies of the Church of Rome, bound by monastic or religious vows," and therefore do not apply to Oratorians, and other congregations of secular priests who are not so bound.

V. OTHER DISABILITIES.

Sect. 9 provides that no person in Holy Orders, in the Church of Rome, shall be capable of being elected to serve Parliament as a member of the House of Commons. This disability is shared by clergymen of the Church of England, but not by Dissenting Ministers.

Sect. 26 forbids any Roman Catholic ecclesiastic to "exercise any of the rites or ceremonies of the Roman Catholic religion, or to wear the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses, under a penalty of £50."

The 11th section of the Relief Act of 1791 (31 Geo. 3, c. 32),

which still remains on the pages of the statute-book—excepts from the relief granted by that statute any priest who shall do any of the things mentioned in the last quoted section, s. 26 of the Emancipation Act, and also any priest "who shall officiate in any place of congregation for religious worship permitted by that Act with a *steeple and bell, or at any funeral in any church or churchyard.*"

It does not, however, itself prohibit any of these things, and as, owing to the complete repeal of the penal code, the freedom of Catholic worship no longer depends on the relief afforded by the Act of 1791, which left the penal statutes themselves unrepealed, it does not appear that there is any prohibition of bells or steeples now in force. A similar conclusion may also be drawn from the statute of William IV., which puts Catholics, as regards their places of worship, on the same footing as Protestant Dissenters.*

Sect. 6 of the Burials Act,† 1880 (43 & 44 Vict. c. 41), expressly authorises any "Christian and orderly service," at the grave, in burials under that Act. The words "Christian service" are defined to include every religious service used by any church, denomination, or person professing to be Christian.‡

With regard to the penalties imposed by the various sections of the Act of 1829, it is important to notice that by s. 38 all penalties imposed by this Act are to be recovered as a debt due to the Crown by information filed by the Attorney-General in England or Ireland, and by the Advocate-General in Scotland. The effect of this section is that the penalties imposed by the Act can only be enforced at the instance of the law officers of the Crown.

* See below, p. 51.

† The provisions of this statute will be fully set out in the next chapter.

‡ There is still on the pages of the statute-book an Act, 3 & 4 Edw. 6, c. 10, which provides that "all books called antiphons, myssales, scrayles, pcessionalles, manuelles, legends, pyes, portuyses, prymars in Lattyn or Inglishe, cowchers, journales, ordinales, or other books, or writings whatsoever *heretofore used for svice of the churche,*" shall be abolished, extinguished, and forbidden for ever to be kept in this realm, and requires them to be delivered up to the mayor, bailiff, or churchwardens, and by them to the bishop to be burned or destroyed. The Act, perhaps, only applies to then existing books.

CHAPTER III.

Worship.

The object of this chapter is to set forth the provisions of the English law specially affecting the celebration of the offices of the Catholic religion. These provisions will be considered under the following heads:—

I. Registration of Catholic Places of Worship.
II. Catholic Marriages.
III. The Burial of the Dead.
IV. The Acquisition of Land for Churches and Burial Places.

I. REGISTRATION OF CATHOLIC PLACES OF WORSHIP.

It has been stated in a previous chapter * that since 1791 Catholics have been allowed to say and hear mass without a penalty. The Relief Act passed in that year (31 Geo. 3, c. 32) enacts that Catholics making the declaration and taking the oath therein prescribed,† shall not be presented, indicted, tried, impeached, prosecuted or convicted, for hearing or saying mass, or for being present at or performing or observing any rite, ceremony, practice or observance of the Popish religion. It further provides that every assembly for religious worship allowed by this Act shall be certified to the Quarter Sessions; and that no person shall officiate at such assembly until his name has been recorded by the Clerk of the Peace. Moreover, no such place of assembly may be locked or barred during the meeting, nor may the building in which it is held have a steeple or bell. ‡

* See page 32.

† As was stated in Chapter I., p. 33, so much of this Act as relates to the Declaration and Oath was repealed by 34 & 35 Vict. c. 48.

‡ As was stated in the last chapter (p. 48), it does not appear that there is any prohibition of bells or steeples now in force.

In 1832, it was enacted by the 2 & 3 Will. 4, c. 115, that "from and after the passing of this Act, His Majesty's subjects, professing the Roman Catholic religion, in respect to their schools, places for religious worship, education and charitable purposes, in Great Britain, and the property held therewith and the persons employed in or about the same shall, in respect thereof, be subject to the same laws as the Protestant Dissenters are subject to in England." One effect of this statute was to bring Catholics within the scope of the 52 Geo. 3, c. 155, which requires the place of worship of Protestant Dissenters to be certified to the bishop of the diocese, the archdeacon of the archdeaconry, and the Court of Quarter Sessions, and to be duly registered in the Archidiaconal or Episcopal Court and by the Clerk of the Peace, from whom a certificate is to be obtained, and imposes a fine of £20 on every person who permits any congregation to meet in any place occupied by him, until the same shall have been so certified. The door of any such religious assembly may not be barred nor bolted, and the penalty for knowingly and maliciously disturbing it is a fine of £40.*

In 1852, an alteration was made in the law relating to certifying and registering places of worship of Protestant Dissenters. An Act passed in that year (15 & 16 Vict. c. 36), provides that no place of meeting of any congregation or assembly of religious worship of Protestants dissenting from the Church of England, shall for the future be certified to any Bishop, Archdeacon or Justices of the Peace, and that it shall be lawful instead to certify the same to the Registrar-General of

* By s. 4 of 9 & 10 Vict. c. 59 (an Act to relieve Her Majesty's subjects from certain penalties and disabilities in regard to religious opinions) it is provided that "from and after the commencement of this Act all laws now in force against the wilfully and maliciously or contemptuously disquieting or disturbing any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorised by any former Act or Acts of Parliament, or the disturbing, molesting, or misusing any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, shall apply, respectively, to all meetings, assemblies, or congregations whatsoever of persons lawfully assembled for religious worship, and the preachers, teachers, or persons officiating at such last-mentioned meetings, assemblies, or congregations, and the persons there assembled."

Births, Deaths and Marriages. The liability of Catholics to register their chapels in the way provided by the 52 Geo. 3, c. 155, is not affected by this Act, which is expressly confined to Protestant Dissenters. But three years later this Act was repealed by the 18 & 19 Vict. c. 81, which provides that every place of meeting for religious worship of Protestant Dissenters and persons professing the Roman Catholic religion, may be certified in writing to the Registrar-General of Births, Deaths and Marriages, and provides forms for that purpose. We shall have to return to this Act presently. Here we may note that there is nothing in it which relieves Catholics from the necessity under which they lay when it was passed of registering their places of worship. It merely enables them to certify such places of worship to the Registrar-General instead of to the Archdeacon, Bishop or Quarter Sessions.

Later in the same session of Parliament, a further Act (c. 86) was passed placing Catholics upon exactly the same footing as Protestant Dissenters in respect of the registration of their places of worship. Its second section provides as follows: "So much of an Act, passed in the second and third years of King William IV. c. 115, as enacts that His Majesty's subjects, professing the Roman Catholic religion, in respect of their places of religious worship shall be subject to the same laws as Protestant Dissenters are subject to . . . shall be read as applicable to the laws to which Protestant Dissenters in England are liable, for the time being, after the passing of this Act."

Such has been the legislation since 1791 regarding the registration of Catholic places of worship. It will have been seen that the 52 Geo. 3, c. 155, has never been expressly repealed, and it might be contended that its provisions regarding the registration of their places of worship still apply to Catholics and Protestant Dissenters who do not avail themselves of the alternative mode of registration in the office of the Registrar-General, provided by the 18 & 19 Vict. c. 81. But, as a matter of fact, those provisions have long fallen into disuse.

The chief practical necessity * for the registration of Catholic

* We say "the chief practical necessity." There are, however, statutes which

places of worship arises from the Act of the 6 & 7 Will. 4, c. 85 (The Marriage Act, 1836). Previously to the passing of that Act in 1837, the solemnization of marriage had been governed by the 26 Geo. 2, c. 33, which made it compulsory upon all persons * entering into a contract of matrimony to attend the parish church, and be there united by a clergyman of the Established Church, according to the form prescribed in the Book of Common Prayer. The 6 & 7 Will. 4, c. 85, authorizes the solemnization of marriages in a place of worship not belonging to the Church of England, if such place of worship has been certified according to law as a place of religious worship (s. 18.). It is, therefore, necessary to set forth the chief provisions of the 18 & 19 Vict. c. 81, regarding such registration.†

They are as follows: Any place of Catholic worship may be certified to the Registrar of Births, Deaths and Marriages in England through the Superintendent Registrar of the District in which such place is situate. The certificate must be in duplicate upon forms provided by the Act, which may be obtained free of charge from the Superintendent Registrar. It is the duty of the Superintendent Registrar to send these forms to the Registrar-General, who, after having duly recorded the place of worship in a book kept for the purpose, returns one of the certificates to the Superintendent Registrar, to be redelivered to the certifying party, keeping the other with the records of the General Registrar's office. A fee of two shillings and sixpence is payable to the Superintendent Registrar with every certificate delivered to him for transmission to the Registrar-General.

When any registered place of religious worship ceases to be used as such, the person, or one of the persons, who certified it, or the trustees, owners, or occupiers thereof, must give notice to the Registrar-General, through the Superintendent Registrar, of

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confer certain rights and privileges upon ministers officiating in *registered* places of worship. Thus the 31 & 32 Vict. c. 122, ss. 19, 20, authorises such ministers (and none other) to inspect the creed register of the nearest workhouse, and to visit and instruct the inmates.

* Except Jews and Quakers, for whose marriages provision has since been made by special Acts of Parliament.

† The text of the Act is given in Appendix D.

such disuse, in the form prescribed by the Act, which may be obtained, without payment, from the Superintendent Registrar. And it is the duty of the Registrar-General when thus, or otherwise, satisfied that any certified place of worship has wholly ceased to be used as such, to cause the record of such certificate to be cancelled and to give public notice thereof by advertisement in some local newspaper, and in the *London Gazette.*

Any place of religious worship thus registered in accordance with the provisions of 18 & 19 Vict. c. 81 may then, in the mode prescribed by 6 & 7 Will. 4, c. 85, be registered for the solemnization of marriages. The proprietor or trustee of the building * must apply to the Superintendent Registrar of the District and must deliver to him a certificate, signed in duplicate by twenty householders, at the least, that such building has been used by them, during one year at least, as their usual place of religious worship, and that they are desirous that it should be registered for the solemnization of marriages, each of which certificates must be countersigned by the proprietor or trustee by whom it is delivered. The Superintendent Registrar then sends both the certificates to the Registrar-General, who registers the building and gives notice of such registration by advertisement in the *London Gazette,* and in some newspaper circulating within the county. A fee of three pounds is payable to the Superintendent Registrar, at the time of the delivery to him of the certificates.

When it is made to appear to the satisfaction of the Registrar-General that a building thus registered for the solemnization of marriage is disused for the public worship of the congregation on whose behalf it was registered, he must cause the registry thereof to be cancelled. And if it be proved to his satisfaction that the same congregation use some new place of worship instead of the disused building, he may substitute and register the new place of worship for the disused building, although the

* The Act says "a separate building," but by 1 Vict. c. 22, s. 35, "any building which shall have been licensed and used during one year next before registration for public religious worship as a Roman Catholic chapel exclusively, *shall be taken to be a separate building*, for the purpose of being registered for the celebration of marriages; notwithstanding, the same shall be under the same roof with any other building, or shall form part only of a building."

new place of worship may not have been used for that purpose during one year, upon application being duly made to him through the Superintendent Registrar. Such cancel, substitution and registry must be made known by the Registrar-General to the Superintendent Registrar, who is bound to make entry thereof in his books, and to certify and publish the same as in the case of the original registry of the disused building. For every such substitution the Superintendent Registrar is entitled to receive, at the time of the delivery of the certificate, from the party requiring such substitution, a fee of three pounds.

II. CATHOLIC MARRIAGES.

Persons desiring to be married in a Catholic church must obtain the Registrar's certificate; they may also obtain from him a licence permitting the marriage to be solemnized with less delay, for a fee of thirty shillings and ten shillings stamp duty.

In the first place, notice must be given in the form prescribed in the Act by one of the parties to the Superintendent Registrar of the District where they shall have dwelt for the preceding seven days—fifteen days if the marriage is to be by licence; or, if they dwell in different districts, then to the Registrar of each District, unless the marriage is to be by licence, when notice to one Superintendent Registrar is sufficient. A copy of the notice is entered by the Registrar in the Marriage Notice Book, which is open, at all reasonable times, without fee to all persons desirous of inspecting it. Either the original notice, or a copy thereof, under the hand of the Superintendent Registrar, must be affixed in a conspicuous place in his office. And for every such notice he is entitled to a fee of one shilling (6 & 7 Will. 4, c. 85, ss. 4, 5; and 19 & 20 Vict. c. 119. s. 3).

One whole day after the entry of this notice, if the marriage is to be solemnized by licence, or twenty-one days after, if it is to be solemnized without licence, the Superintendent Registrar, upon the demand of the party by whom notice was given, issues a certificate in the form provided by the Act, showing that the requisite notice has been given, and that the issue of the

certificate has not been forbidden by any authorised person, and for this certificate a fee of one shilling is payable (6 & 7 Will. 4, c. 85, s. 7: and 19 & 20 Vict. c. 119, s. 4).

The marriage may then be celebrated in the Catholic church duly registered for the solemnization of marriages, which is specified in the notice, and which must, as a rule,* be in the district of the residence of one of the parties. But it must be celebrated in the presence of a Registrar of the district in which the church is situated, and of two or more credible witnesses, and a fee of five shillings—ten if the marriage is by licence—is payable to the Registrar for his attendance (6 & 7 Will. 4, c. 85, ss. 18, 20, 22). The Act further provides that in some part of the ceremony, and in the presence of the Registrar, each of the parties shall declare—

"I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.," and that each of the parties shall say to the other—

"I call upon these persons, here present, to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife [or husband]."

The celebration of the marriage must take place within three calendar months next after the day of the entry of the notice. Should a certificate of the marriage ("The Marriage Lines") be desired, it may be procured from the Registrar-General, or Superintendent Registrar, upon payment of a fee of two shillings and sixpence (6 & 7 Will. 4, c. 85, ss. 35, 36).

The clergy should take note that by s. 39 a priest would be guilty of felony if he knowingly solemnized a marriage in England in any other place than the registered building specified in the notice and certificate, or in a registered building in the absence of a Registrar of the district.

It is provided by 19 & 20 Vict. c. 119, s. 12, that "if the parties to any marriage contracted at the registry office of any district shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman

* For the exceptions see Geary's "Law of Marriage and Family Relations," p. 92.

or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention to do so; and such clergyman or minister, upon the production of their certificate of marriage before the Superintendent Registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself, or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong."

Before passing away from the subject of Catholic marriages it may be remarked that the existing state of the law is felt to be not wholly satisfactory. No doubt it is a great improvement upon the state of things existing before 1837. Still the trouble and expense which a Catholic working man who wishes to be married must incur, constitute a somewhat serious grievance. It is not enough for him to have recourse to the priest in whose parochial district he lives, and by whom the marriage in church required by his conscience has to be celebrated. He must also go to the Superintendent Registrar, of the district in which he resides, and give notice of his intended marriage. If the intended bride lives in the district of a different Superintendent Registrar, notice must be given in that district also.

The districts of the Superintendent Registrars are often of great extent, and a working man has to sacrifice the whole or the greater part of a day's work and wages in order to go to the office of the Superintendent Registrar for the purpose of giving this notice. After the lapse of twenty-one days the working man must again apply to the Superintendent Registrar for a certificate, showing that the requisite notice has been given, and that the issue of the certificate has not been forbidden by any authorised person. And where the parties dwell in different districts, this certificate must be obtained from the Superintendent Registrar of each district. Moreover, the various fees payable, including the fee for a certificate for the marriage, amount to eleven shillings and sixpence, when the persons intending marriage dwell in the districts of different Superintendent Registrars, and to nine shillings and sixpence where they dwell in the same district. These sums are in themselves not

inconsiderable; and they are payable at a moment when other unusual expenses connected with his marriage fall upon the working man. They are in addition to the fee usually offered to the priest who actually celebrates the wedding in church, and who has published the banns, instructed the married pair, and assisted them in complying with the formalities and rules of registration. This fee is, no doubt, purely voluntary, and is frequently dispensed with by the clergy, but the poor are ashamed of being married in church without offering it.

The practical result has been found by experience to be, that poor persons frequently live in a state of concubinage, because they are unable or unwilling to pay the double fees on their marriage. These observations are, we believe, applicable to all Protestant Dissenters, except Quakers, as much as to Catholics.

For the poor of the Established Church there is no necessity to incur these double fees. They are usually married by banns, for which fees of inconsiderable amount are payable by custom, varying in different places. The marriage is celebrated by an ordained clergyman without the presence of a Civil Registrar, and without any of the applications to the Superintendent Registrar required in the case of Catholics and other Dissenters, by the Statutes to which we have referred. To this it may be added that the necessity which exists for the attendance of the Registrar at Catholic marriages, and for the declaration above-mentioned in his presence, is in itself a grievance, as indeed has been expressly recognised by the Royal Commission of 1865. It is the civil officer and not the priest who is regarded by the law as the officiating minister: the priest is ignored, and the iteration which is required before the Registrar after the religious rite, of a statement solemnly made by the newly-married parties in the course of it, has been described, not without reason, as "a slur upon the ministrations of the Catholic Church."

In Appendix E will be found a letter from the Catholic Bishops to the Marriage Law Commission, 1867–8, in which the subject is dealt with: and in Appendix F an extract from the Report of the Commissioners recommending the adoption of the course suggested by the Catholic Hierarchy.

III.—THE BURIAL OF THE DEAD.

The next topic claiming attention in this chapter is afforded by certain provisions of the law regarding the burial of the dead. Up to the year 1850 there was no special legislation concerning burial-grounds which need be noticed, although "the unsatisfactory state of our graveyards had long occupied the attention of clergymen, philanthropists, and sanitary reformers." * In that year a measure, called the Metropolitan Interments Act, was passed. "Some defects in this enactment, rendering it inoperative, caused its repeal by the Burials (within the Metropolis) Act, 1852 (15 & 16 Vict. c. 85), which latter Act laid the foundation of the present law for the establishment and regulation of burial-grounds throughout the country. Its provisions were extended in the following session to England and Wales by the 16 & 17 Vict. c. 134 (afterwards amended by the 17 & 18 Vict. c. 87), and the whole have been further amended by the 18 & 19 Vict. c. 128, the 20 & 21 Vict. c. 81," † and other statutes.

It is not necessary here to examine in detail these statutes. Catholics are specially affected by these provisions in them which relate to the division of the burial-grounds into "consecrated and unconsecrated parts," and to the provision of chapels for the performance of the funeral service.

By s. 30 of 15 & 16 Vict. c. 85 (an Act to amend the laws concerning the burial of the dead *in* the Metropolis) it is enacted that when any burial-ground is provided under that Act, the Burial Board shall set aside a portion thereof which shall not be consecrated, and shall build thereon a suitable chapel or chapels.

This provision was extended to burials *beyond* the Metropolis by 16 & 17 Vict. c. 134, which further enacts—

"Provided always that in all cases in which any Burial Board shall provide a new burial-ground under the said Act of the last Session of Parliament 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

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* Baker on 'Burials,' intro., p. vii. † *Ibid.*, p. viii.

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 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."

This obligation is, however, modified and interpreted by s. 14 of 18 & 19 Vict. c. 128, which is as follows:—

"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 as 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."

It therefore appears that in every case in which a new burial-ground is provided under these Acts, a chapel may be built on the consecrated portion and another or others on the unconsecrated portion of the ground; but, where a Church of England chapel is erected on the consecrated ground, it is imperative that a chapel or chapels should also be built on the unconsecrated ground, unless that be deemed unnecessary by three-fourths of the vestry and by the Secretary of State.

When, under this authority of the Acts which have just been considered, a portion of the unconsecrated ground in a cemetery has, with the sanction of the Secretary of State, been allotted for the exclusive use of Catholics, there is no power to invade the right so conferred.*

Before leaving the subject of the position of Catholics in respect of Burial Boards, attention may be called to a practical grievance occasioned by what seems to be an abuse by some Boards of their statutory authority. Sect. 38 of the 15 & 16 Vict. c. 85,† runs as follows:—

"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 ground shall be determined by the bishop of the diocese."

Under the powers given by this section Burial Boards are in the habit of making rules for the management of their grounds;

* From the Secretary of State, Home Department, to the Secretary to the Clerk to the Burial Board at King's Lynn.

"Whitehall,
"15*th April*, 1892.

"Sir,

"I am directed by the Secretary of State to say that he has had under his consideration your letter of the 7th ult., replying to the letter from this department on the 3rd ult., on the subject of the complaint of the Roman Catholic priest at King's Lynn, of an invasion of his rights in the portion of the cemetery at King's Lynn allotted for the use of Roman Catholics; and has inquired into the facts of the case; and that, while recognising that there were peculiar circumstances of the case which are not likely to occur again, he thinks it right to express his opinion that when once an allotment has been made under the Act 16 & 17 Vict. c. 134, to any particular religious denomination (and he understands that in this case an allotment has been made to the Roman Catholics), such allotment is for the exclusive benefit of the denomination in whose favour it is made; and that there is no power to invade the right so conferred; and that it is the duty of the Board to resist such invasion as far as they can do so. "I am, Sir,

"Your obedient servant,
"E. Leigh Pemberton."

† This Act relates to burials *within* the metropolis: but by 16 & 17 Vict. c. 134, s. 7, the provisions of certain portions of it—s. 38 among them—were extended to burials *beyond* the metropolis.

‡ By the Secretary of State under s. 45 of the Act.

and one such rule commonly is that monumental inscriptions, if containing anything more than the name, date of death, and age of the deceased, must be approved by the Board, from whose decision there is no appeal, except in respect of inscriptions in the consecrated part of the ground, as to which the Act expressly provides an appeal to the bishop of the diocese. In a case which came before the Catholic Union, it was proposed to erect to the memory of a poor Catholic interred in the Catholic portion of the cemetery of the town in which he had resided, a simple monument, with an inscription beginning "Of your charity pray for the soul of ——." The Burial Board took exception to the proposed inscription, upon the ground of its asking for prayers for the soul of the deceased Catholic, and refused to allow it unless that portion of it were omitted. This would appear to be a very serious abuse of the powers vested in the Board, and it is the more unwarrantable too, because even members of the Protestant Establishment of this country interred in their own part of the ground could not be subjected to it. It was expressly decided by a very learned judge, Sir Herbert Jenner, in the Court of Arches, that an inscription requesting prayers for a deceased person was not illegal in the churchyards of the Anglican Communion.* Catholics in common with others pay rates, which are applied for the

* In the cause of the Office of the Judge promoted by *Breeks* v. *Woolfrey*, Sir Herbert Jenner said, "It has not been contended, indeed it has been admitted, that if the inscriptions be of the character attributed to them in the citation, namely, 'contrary to the articles, canons, and constitutions, and to the doctrines and discipline of the Church of England,' no person has a right to erect a tombstone with such an inscription impugning the doctrines of the Church of England, and that a person so offending is liable to be punished and the stone removed."

The inscription was, "Pray for the soul of P. Woolfrey," and the Judge decided in a very elaborate judgment that such an inscription was not illegal, as by no canon or authority of the Church in these realms had the practice of praying for the dead been expressly prohibited; and the inscription on Bishop Barrow's tomb in the Cathedral of St. Asaph in 1680, "*O vos transeuntes in domum Domini in domum orationis, orate pro conservo vestro, ut inveniat misericordiam in die Domini*," was much relied upon both by the advocate for Woolfrey and by the Judge.—(See Curteis, 'Eccles. Rep.,' 880.)

Prayers in the nature of prayers for the dead are used on special occasions in the chapels of some colleges at Oxford.—'The Ecclesiastical Law of the Church of England,' by Sir Robert Phillimore, D.C.L., vol. i., p. 888.

maintenance of the public cemeteries; portions of those cemeteries are usually set aside for them; and that in such portions they should be restrained from the exercise of a part of their religion, and one of its most consolatory parts, seems a serious infringement of their religious liberty.

An Act of considerable importance to Catholics is the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 4). The text of statute is given in full in Appendix G. The provisions of it which are of most importance to Catholics will here be briefly stated.

The object of the Act was to legalise burials in churchyards or graveyards belonging to the Established Church, without the rites of that church. And the word "graveyard" is defined in sect. 1 of the Act as including 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.

The first step to be taken by those who desire to avail themselves of the provisions of the Act is to give forty-eight hours' notice to the rector, vicar, or other incumbent or, in his absence, to the officiating minister. The notice, which must be indorsed on the outside "Notice of Burial," is to be left at the usual place of abode of the clergyman, or given to any one appointed by him to receive it, save in the case of a burial-ground or

This seems the proper place to insert Counsel's Opinion given upon the question, whether an Anglican Vicar was warranted in refusing to allow the words "Jesus, mercy; Mary, help," to be inscribed upon the tombstone of a Catholic buried in his churchyard.

"Unquestionably the Rector or Vicar of the parish has control over the inscriptions on the tombstones in his churchyard. There is an appeal from him to the Bishop. But it is clear law that no person has a right to place on a tombstone in a Church of England churchyard any inscription contrary to the articles, canons, and constitutions, and to the doctrines and discipline of the Church of England.

"I may observe that in the celebrated case of *Breeks* v. *Woolfrey*, decided in the Court of Arches by Sir Herbert Jenner, it was held that an inscription requesting prayers for the soul of a deceased person was not illegal, as the practice of praying for the dead has not been expressly prohibited by any canon or authority of the Church of England.

"But this decision would not cover such an inscription as 'Jesus, mercy; Mary, help,' which, in my judgment, is quite inadmissible in a Church of England churchyard."

cemetery vested in a Burial Board, when it is to be *addressed* to the Church of England chaplain (if there be one), but *left* at the office of the clerk of the burial board. It must be in the following form or to the same effect.

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 Act, 1880.

To the Rector [*or, as the case may be,*] of .

The proper person to give the notice is any relative, friend, or legal representative, having the charge of, and being responsible for the funeral of the deceased.

When the burial has taken place, the person having charge of, or being responsible for it, must on the day thereof, or the next day thereafter, transmit 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, a certificate in the following form or to the like effect.

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 .

The clergyman is entitled to the usual fee, just as though the burial had taken place with the service of the Church of England.

It may be well to mention that the burial may take place

without any religious service, or with such Christian and orderly religious service at the grave as the person having the charge of, or being responsible for the burial may think fit; and, that in case of a pauper dying in the workhouse, notice must be given to the Master of the workhouse by the husband, wife, or next of kin.

It should be pointed out that this Act does not give a right of burial where no previous right existed. This is expressly provided by sect. 9.

"Nothing in this Act shall authorize 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."

The object of this section would clearly seem to be (1) To prevent anyone from claiming a right of burial anywhere under the Act, the provisions of which are confined to people possessing rights of burial, but debarred from exercising them through objections to the burial service of the Established Church. (2) To restrict the application of the Act to "graveyards," as defined in sect. 1, and therefore to exempt therefrom private cemeteries, e.g., Catholic cemeteries.

IV. THE ACQUISITION OF LAND FOR CHURCHES AND BURIAL PLACES.

There are two Acts of Parliament (36 & 37 Vict. c. 50, and 45 & 46 Vict. c. 21) which facilitate the conveyance of land for sites for places of religious worship, and for burial places. We give these statutes in Appendix H.

CHAPTER IV.

Parents and Guardians.

It is proposed in this chapter to consider the rights of parents and guardians over their children with special reference to the question of religious education. The subject may be conveniently dealt with in the following order:—

I. Nature and Extent of the Father's Authority.
II. Control of the Father's Authority by the Courts.
III. Religious Education after the Father's Death.
IV. Illegitimate Children.
V. The Appointment of Guardians.
VI. Remedies.

I. NATURE AND EXTENT OF THE FATHER'S AUTHORITY.

By the law of England the father is primarily entitled to the custody and control of his children, and cannot divest himself of the right by agreement, though in some cases he may forfeit it by his conduct. The authority of a father, said Lord O'Hagan in *In re Meade's Minors*,* "to guide and govern the education of his children is a very sacred thing bestowed by the Almighty, and to be sustained to the uttermost by human law. It is not to be abrogated or abridged without the most coercive reason." To such an extent was this principle carried, that a husband who had deserted his wife, or forced her to live apart from him by his misconduct, was allowed to inflict a further wrong by depriving her of access to her children. This abuse, as we shall see, has been reformed by statute, but in the exercise of his legitimate right a father still enjoys the highest protection of the law.

* Ir. Law Rep. 5 Eq. 103.

The nature and extent of the father's right to the custody and control of his children is well illustrated in the cases of *Agar-Ellis* v. *Lascelles* (1878),* and *Agar-Ellis* v. *Lascelles* (1883),† both of which arose between the same parties. In the first the Court refused to enforce an ante-nuptial agreement on the part of the father to bring up the children as Catholics, and adopted the expression in *Andrews* v. *Salt*.‡ "We are of opinion that such an agreement is not binding as a legal contract. No damages can be recovered for a breach of it in a Court of law, and it cannot be enforced by a suit for specific performance in equity. We think that a father cannot bind himself conclusively by contract to exercise, at all events, in a particular way, rights which the law gives him for the benefit of his children and not for his own."

The second *Agar-Ellis* case§ dealt with the extent and duration of a father's authority over his child. In January 1883 the eldest of the infants attained the age of sixteen, and being a ward of Court, applied to the Court to be allowed the free exercise of her religion as a Catholic, and to be permitted to live with her mother. The father consented to the child's practising her religion as a Catholic, but maintained his restrictions on her intercourse with her mother, on the plea that he believed that the mother would alienate his daughter's affections from him. The daughter applied to the Court for leave to spend her vacation with her mother, and for her mother to be allowed free access to her. The Court, whilst intimating its disapproval of the father's conduct, declined to interfere with him, and laid down that the father, when living, has the right to the custody and tuition of his children, whilst they are under the age of twenty-one years, and that the Court would not deprive him of it except (1) for gross moral turpitude, or (2) when he has by his conduct abdicated his paternal authority, or (3) when he seeks to remove his children, being wards of Court, out of the jurisdiction.

But while the Court will not interpose its authority to force a father to exercise his paternal rights in any particular way,

* 10 Ch. D. 49.
† 24 Ch. D. 317.
‡ 8 Ch. D. 636.
§ 24 Ch. 317.

on the other hand, it should seem that it will not always interfere to assist him to override the wishes of his children, when they have attained an age to choose for themselves. This is certainly so with regard to custody.

Up to the age of fourteen in boys and sixteen in girls a father may recover the custody of his children from anyone who detains them against his will by the summary procedure of *habeas corpus*, or by application to the Chancery Division. But after the age of fourteen in boys and sixteen in girls, the children may choose for themselves. "Although," says Cockburn, C.J., "a father is entitled to the custody of his children until they attain the age of twenty-one, this Court will not grant a *habeas corpus* to hand a child which is below that age over to its father, provided it has attained an age of sufficient discretion to enable it to exercise a wise choice for its own interests." *

On the same principle it might be thought the Court would not force a child who has reached the years of discretion to remain against his will in his father's religion any more than to remain in his father's house. It is not, however, possible to lay down any very definite rule on this subject, further than that the Court will grant an injunction against any one attempting to induce a ward of Court to abandon the father's religion and adopt another.

In *Todd* v. *Lynes*, an unreported case referred to by Mr. Simpson,† a young man of seventeen having entered a monastery against his father's will, the father made him a ward of Court, and obtained from Malins, V.C., an order to the superior of the monastery requiring him to refrain from admitting the ward to monastic vows, and to deliver him into his father's custody.

In *Re Gill's Minors* ‡ Lord Chancellor Ashbourne expressed the opinion that a female ward of Court should not become a postulant in a convent without the leave of the Court. He further observed that there was no precedent either in England or Ireland for such permission being either applied for or granted.

* *Reg.* v. *Howes*, 3 E. & B. 336.
† "Law of Infants," second edition, p. 145.
‡ 27 Ir. L. R. Ch. 129.

In *Re Lyons*,* on the other hand, the Court of Chancery refused its assistance to enable a father to recover the custody of his daughter, a Jewish girl, who had been induced to become a Christian, and lived in a Christian family for two years. In this case the girl was very unwilling to return to her father, and evidence was given that to force her to do so would be dangerous to her health.

In the more recent case of *Iredell* v. *Iredell*,† the headnote is as follows:—

"Where persons of a certain religious faith attempt to induce a ward of Court to disobey her father, and have secret interviews with her to induce her to adopt their religion instead of her father's, the Court will grant an injunction restraining them from having any further communication with the ward." The facts as reported are not very clear, but it would rather seem as if some of the defendants had not come into communication with the ward until after her change of religion, for which, therefore, they could not be responsible. In such circumstances, it is submitted, an injunction ought not to go. The right of minors to choose their own religion after arriving at years of discretion has been repeatedly recognised in cases arising after the father's death; and there would seem to be no difference in principle, when the change of religion occurs in the father's lifetime. If a minor has a right to become a Catholic, he has a right to communicate with the ministers of his religion, and an injunction restraining the latter from communicating with him would operate as an infringement of his religious freedom. The proposition in the headnote above quoted, "that the Court will restrain attempts to induce a ward to leave the father's religion," is not open to these objections.

II. CONTROL OF THE FATHER'S AUTHORITY BY THE COURTS.

Though the law takes so high a view of a father's rights, there have always been cases in which the Court of Chancery, in the exercise of its discretion, has refused to enforce them to

* 22 L. T. N. S. 770.

† Only reported in 1 Times L. R. 260.

the manifest detriment of the child. As we have already seen, it was laid down in the *Agar-Ellis* case,* that the Court would not deprive the parent of the custody and control of his children, except (1) For gross moral turpitude. (2) When he has by his conduct abdicated his paternal authority, and (3) When he seeks to remove his children, being wards of Court, out of the jurisdiction without the permission of the Court.

But even where the case does not fall exactly under any of these three heads, the Courts have now a very wide discretion conferred upon them when the father has been guilty of misconduct or neglect, either towards his wife or children. Ever since the passing of Talfourd's Act, 2 & 3 Vict. c. 54, which, however, was limited to children under the age of seven, the Courts have been empowered to interfere on the application of the mother, and they now possess a very full discretion in all such cases.

The Guardianship of Infants Act, 1886, sect. 5 provides that "The Court may, upon the application of the mother of any infant (who may apply without next friend) *make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the conduct of the parents, and to the wishes as well of the mother as of the father.*" The text of the Act is given in Appendix I.

In exercising this very full discretion the Court will have regard to three things; (1) The paternal rights; (2) The marital duty; and (3) the interests of the child.† The nature of the second consideration, as explained by Pearson, J., in *Re Elderton*,‡ is that in deciding which parent is to have the custody of the children, the Court will look to see which of them is responsible for breaking up the joint home, and depriving the children of that joint care of father and mother, to which they are entitled. Accordingly, in that case, where the husband by his misconduct towards his wife had justified her in living apart from him, she was awarded the custody of the children.

It would appear, however, the section does not deprive the

* 24 Ch. D. 317.
† *Re Halliday*, 17 Jur. 56; *Smart* v. *Smart*, Times, Aug. 1, 1892.
‡ 25 Ch. D. 229.

father of his control over the religious education of his child. There is, indeed, a dictum of Chitty, J., in *Condon* v. *Vollum*,* that the words "custody and control" in the Infants Custody Act, 1873 (which is given in Appendix J), "are large enough to comprise all rights which a father has over his children, including that of directing their religious education," but section 5 of the Act of 1886 speaks only of "custody," and not of "custody and control;" and in *Re Scanlan* (below) it was decided that the guardianship conferred upon the mother after the father's death by the Act of 1886, does not entitle the mother to bring up the children in a religion differing from the father's. The two decisions are not easily reconcileable.

Further, after the mother's death, where she has exercised during her lifetime the power conferred upon her by section 3 of the Act, subsection 1, to nominate provisionally a guardian to act jointly with the father, the Court, if satisfied that the father is unfitted for any reason to act as sole guardian to his children, may confirm the appointment of the mother's nominee as joint guardian, and make such other order as to guardianship as it may think fit.

This appears to be the place to deal with separation deeds giving the mother the custody of the children. Formerly such deeds were regarded as illegal, but the Infants Custody Act 1873 (36 & 37 Vict. c. 12, s. 2), enacted that—

"No agreement contained in any separation deed between the father and mother of an infant, or infants, shall be held to be invalid by reason only of its providing that the father of such infant, or infants, shall give up the custody and control thereof to the mother. Provided always that no Court shall enforce any such agreement, if the Court shall be of opinion that it will not be for the benefit of the infant, or infants, to give effect thereto."

The construction put by Chitty, J., on the words "custody and control" in this section, has already been referred to.

In *Re Besant*,† a mother who was alleged to hold atheistical opinions, and had published what the Court regarded as an obscene book, was deprived of the custody of her children which she possessed under a separation deed, on the ground that such a

* 57 L. T. 154. † 11 Ch. D. 508.

provision in a separation deed would only be enforced when it was for the benefit of the children.

Under the Divorce Acts (20 & 21 Vict. c. 85, s. 35, and 22 & 23 Vict. c. 61, s. 4), the judge making a decree of divorce or judicial separation has full discretion as to the custody and control of the children of the marriage.

We have next to consider the grounds, enumerated above, in which the Court, apart from statute, would always deprive the father of the custody of his child. Gross moral turpitude need not long detain us. The leading case is *Shelley* v. *Westbrooke*,* in which Lord Eldon refused to restore to the poet Shelley the children by his first wife whom he had deserted for three years. The main ground of that decision was that the principles which Shelley openly professed and acted, led him into conduct which the law regarded as vicious, and that he had declared his intention of bringing up his children in similar views.† In *Re Goldsworthy* ‡ it was held that the fact that the father was living in adultery was not in itself sufficient to warrant his being deprived of the custody of his child; but it would of course be otherwise if he sought to make the child live under the same roof as his paramour. § In *Smart* v. *Smart*, ‖ a case coming from Canada, and not within the Guardianship of Infants Act, 1886, the Privy Council laid down very recently that the sufficiency of the grounds for depriving a father of the custody of his children must be judged by the moral standard, not of any past time, but of the present day, and they accordingly, in the exercise, not of any statutory authority, but of the original jurisdiction of the Court, refused the father's application to recover the children from the mother, on the ground that the separation had been brought about by his misconduct, and that it would be for the interests of the children to remain with the mother.

The second class of cases in which the Court was always willing to interfere with a father's rights was where he had

* Jac. 266. † See also *Thomas* v. *Roberts*, 3 De G. & Sm. 758.
‡ 2 Q. B. D. 811, and *Condon* v. *Vollum*, 57 L. T. 184.
§ *Re Witten*, 3 Times L. R. 811; and W. N. 1887, 167.
‖ Times, Aug. 1, 1892.

abdicated his rights to the custody and control of his children, and could not resume it without injuriously affecting their interests. The leading case is *Lyon* v. *Blenkin*,* where a father had allowed his child to be brought up by a stranger in a social position superior to his own, and then sought to assert his rights in such a way as seriously to affect the child's interests and prospects. In the course of his judgment Lord Eldon made the following remarks as to the position of a father who has allowed his children to be educated in a particular religion.

"A father may permit his children to be brought up by other persons of a particular religious persuasion, so as to make it difficult for the Court not to see that the happiness of the children must be affected if interrupted in the course of their education in these principles, and that their father would be the author of that suffering to them." †

It may, therefore, be concluded that a father would not be assisted by the Court to alter the religious convictions of his children, after he had allowed them to become fixed in another creed.

The misconduct of either parent is now in many cases visited by statute with the deprivation of the custody of their children.

The Guardianship of Infants Act, 1886, s. 7, provides that, where a decree for separation or a decree *nisi*, or absolute for divorce shall be pronounced, the Court may declare the person by reason of whose misconduct such decree is made, to be a person unfit to have the custody of the children (if any) of the marriage, and, in such case, the parent so declared to be unfit shall not upon the death of the other parent be entitled as of right to the custody or guardianship of such children.

A Magistrate granting a wife a judicial separation for an aggravated assault under 24 & 25 Vict. c. 100, s. 43, may grant her the custody of her children under the age of ten.

And by the Criminal Law Amendment Act, 1885 (52 & 53 Vict. c. 56), parents and guardians encouraging the prostitution of a girl under sixteen may be deprived of her custody, and a guardian appointed in their place.

Also any one having the control of a child convicted of an

* Jac. 245. † Ib. 260.

offence under the Prevention of Cruelty to and Better Protection of Children Act, 1889, may be deprived of such custody (see the Act in Appendix K, s. 5, &c.)

Further, under the Poor Law Act, 1889 (52 & 53 Vict. c. 56, see Appendix L), where a child who is deserted by its parents, or whose parent is in prison for any offence against it, is maintained by the guardians, they may resolve that it shall be under their control until it attains the age of sixteen, if a boy, or eighteen, if a girl; and they are thereupon to have all the power of a parent over it, except that of settling its religious persuasion. Parents may, however, be restored to their rights in proper cases by the order of a Magistrate.

But the widest and most important restrictions on the rights of parents are to be found in the recent Custody of Children Act, 1891, printed in Appendix M, which restrains the right of unfit parents who have parted with the custody of their children to recover it.

Section 1 provides that "where a parent applies for the production of his child. and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child," the Court may in its discretion decline to order it to be handed over to him.

Section 2 provides that, where at the time of such application for its production the child is being brought up by another person, or boarded out by the guardians, the Court, if it gives up the child, may order the parent to repay the whole or a reasonable part of the expenses incurred upon the child.

Section 3 provides that where (*a*) a father has abandoned or deserted his child (*b*) or had allowed it to be brought up by another person at that person's expense, or by the guardians, "for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties," the Court shall not order the child to be given up, unless the parent has satisfied the Court that "having regard to the welfare of the child he is a fit person to be entrusted with its custody."

There are very large limitations on the rights of parents in

the humbler classes of the community. The next section (s. 4) provides that no advantage shall be taken of them for purposes of proselytizing.

Where the application of the parent is refused, and the child is being brought up in a religion different to that in which the parent has a legal right that he should be brought up, the Court is to make such order as may secure that the child shall be brought up in the parent's religion.

This, however, is "not to interfere with or affect" the power of the Court to consult the wishes of the child, or to diminish the right which the child now possesses to its own free choice.

III. RELIGIOUS EDUCATION AFTER THE FATHER'S DEATH.

In the absence of very special circumstances, and unless the father has done something during his lifetime to abdicate his rights, a surviving mother is bound to bring up her children in the religion of the father. A few instances in which this rule has been applied will be sufficient.

In *Austin* v. *Austin* * Lord Westbury ordered the child of a Catholic father to be left in the custody of its Protestant mother until attaining the age of seven, when application was to be made to the Court to make provision for bringing it up as a Catholic.

In *Hawksworth* v. *Hawksworth*,† the child of a Catholic father had been brought up as a Protestant until eight and half years of age. The Court, on being applied to, ordered her to be brought up as a Catholic, and declined to examine the child as to her religious opinions. In the earlier case of *Stourton* v. *Stourton*,‡ where a child had been brought up as a Protestant by the mother up to the age of nine, the Court examined the child, and decided that her Protestant convictions were too fixed to be interfered with. This exercise of judicial discretion has, however, been much commented on in later cases, and would not now be followed. In *Re Newberry*,§ the widow of an Anglican clergyman having joined the Plymouth Brethren, was ordered

* 34 L. J. Ch. 192–499.
† L. R. 6 Ch. 539.
‡ 8 De G. & G. 760.
§ L. R. 1 Eq. 431.

to bring up her children as members of the Church of England, even though one of them, aged fourteen, expressed a wish to belong to the Plymouth Brethren.* In *Witty* v. *Marshall* † the Court expressed reluctance to order the son of a Catholic father, who had been brought up as a Protestant up to the age of fifteen, to be educated as a Catholic, and ordered that he should be examined by the Court as to his convictions.

The position of a mother in regard to her children was greatly altered by the Guardianship of Infants Act, 1886.‡ By that Act (see Appendix) the mother, if surviving, is appointed sole guardian of her children, if the husband has not appointed any, and joint guardian if he has. She is likewise empowered to nominate a guardian after her death. This statute, it has been decided in *Re Scanlan*,§ does not affect the mother's duty to bring up her children in the religion of the father. In that case, where a Catholic mother was bringing up the child of a Protestant father as Catholic, the Court appointed two Protestants to act jointly with her as co-guardians, and directed the child to be brought up as a Protestant.

Next come cases presenting much more difficulty, in which the deceased father has been held by his conduct in his lifetime to have abdicated or waived his control of the religious education of his children, so as to have disentitled himself to have his dying wishes respected. The decision in these cases is in the discretion of the Courts, and it is not easy to deduce a uniform rule from the modes in which it has been exercised. We need hardly observe that the more recent cases are of the greatest authority as to the way in which the Court will now be inclined to act.

Hill v. *Hill*, ‖ decided by Wood, V.C., in 1862, has been referred to as the case in which the power of the Court to disregard the father's dying wishes has been carried to the furthest extent. In that case the father was a Catholic and the mother a Protestant. One of the children was baptized first as a Catholic, and afterwards as a Protestant; the other was baptized as a

* See also *Skinner* v. *Orde*, L. R. 4 P. C. 60.
† 17 Ch. 68.
‡ 49 & 50 Vict. c. 27, printed in Appendix I.
§ 40 Ch. D. 280.
‖ 31 L. J. Ch. 505.

Protestant only. The children were brought up as Protestants by the mother, and nothing was ever done by the father to educate them as Catholics down to the time of his death, when the eldest was eight years old. He made a will appointing the mother as one of the guardians, and directing the children to be brought up as Catholics. He was held to have abdicated his right to direct the religious education of his children.

The circumstances of *Re Scanlan*,* decided in 1888, much resembled this case. The father, a Protestant, had allowed his children to be brought up as Catholics, but a short time before his death he asserted his control over them by placing them in Protestant schools. He was held not to have abdicated his rights.

The important case of *Andrews* v. *Salt*,† which contains a full exposition of the principles on which, in the opinion of the Court of Appeal, such questions should be decided, has next to be dealt with. In that case there was an ante-nuptial agreement between a Catholic father and the Protestant mother that the boys should be Catholics, and the girls Protestants. The father was absent, and ill of consumption at the birth of the child in question, a girl, but he wrote that a priest would call and baptize the child as a Catholic. This was not done, but by the mother's direction the child was baptized a Protestant. The father did not reproach his wife for what she had done, but appointed a Catholic guardian by his will, and ordered his children to be brought up as Catholics. After his death, the guardian left the child with the mother and her Protestant relations, and she was brought up as a Protestant until the age of nine, when the Court refused to order the mother's relations to hand her over to the testamentary guardians to be brought up as a Catholic.

The grounds of this important judgment may be summarised as follows‡:—

(1) That an agreement by parents of different religions to educate children in their respective religions, "is not binding as

* 40 Ch. D. 200. † 8 Ch. 622 (1873).

‡ See Opinion *Re Violet Nevin*, an infant, *Catholic Union Gazette*, June 1891, p. 52.

a legal contract," and this plainly is intended to apply to a promise as to all the children, for the judgment proceeds, "a father cannot bind himself conclusively by contract, or otherwise, to exercise, taking events in a particular way, rights which the law bids him for the benefit of his children, and not for his own."

(2) That if after his death it was for the child's temporal benefit to educate it in the father's religion, that would be done, notwithstanding his agreement with the mother for education in her religion.

(3) That if education in the mother's religion is beneficial, it will be ordered if the father has so acted as to have waived or abandoned his right to have the child educated in his own religion.

(4) That an ante-nuptial promise in favour of the mother's religion has weight, perhaps great weight, in considering whether there has been such waiver or abandonment.

(5) That the child in that case (whom the Court saw) had no such distinctive leaning towards the Church of England, as to make Catholic education wrong.

(6) That if there were no religious question, it would be better for the child, in that case, to remain with the mother's relations.

(7) That *notwithstanding such an advantage, the Court cannot refrain to order education in the father's religion, if he has done nothing to forfeit or abandon his right to have his child educated in his own religion.*

(8) That the father and the uncle—the testamentary guardian—had in that case, by their conduct lost this right.

(9) That as to the father this conduct consisted—(*a*) Of his promise to his wife; (*b*) Of his not telling his wife on the child's birth (when he was ill and absent) that the child was to be baptized a Catholic; (*c*) Of his not reproaching her with the Protestant baptism, and saying he intended a Catholic education; and (*d*) Of his concealing from her his will, which he had made at a distance on his death bed, and two days before his death.

(10) That this conduct on the part of the testamentary guardian, consisted apparently in his not having interfered before.

(11) That the result of his and the father's conduct, had been that the child had been brought up by the Fleetcrofts (the mother's family) as a Protestant, and could not be removed from their custody without prejudice to her happiness, her prospects in life, and possibly her health.

It thus appears how very small an amount of fact will support and enforce the promise when this is for the child's temporal advantage.

In the next case to be referred to, *In re Clarke,** decided by Lord Justice Kay when Mr. Justice Kay, there was a mixed

* 21 Ch. D. 817.

marriage, a promise of Catholic education by a Protestant father, everything done that could be done to support and carry out this promise down to the father's death, when there was a daughter aged five and a son aged three, and nothing whatever to the contrary except an alleged statement by the father to his mother, that if he had a son he should wish him sent to a public school in England. The learned judge, however, expressed some hesitation about ordering the ward to be brought up as a Catholic, and was influenced in considering what would be for the ward's benefit by the fact that the estate was situated in Lancashire. "A county in which," he observed, "there are a very large number of Roman Catholics, even among the upper classes, the landed gentry of the county, and in which he will find, if he is brought up in that faith, plenty of companions of his own station of the same faith, and he will be by no means in the position in which a Roman Catholic gentleman might be in any other county in England, but he will be in a county in which some of the first people are of the Roman Catholic faith." But in spite of this dictum, the learned judge's decision could scarcely have been different in whatever county the ward's estate had happened to be.

A still more recent case on the subject is *Re Nevin.** In that case there was an ante-nuptial agreement on the part of the Protestant father that the child should be brought up a Catholic, and it was so baptized with his consent. When the child was three years old the father died in a state of destitution at the house of Miss M——, a Protestant cousin of his wife. The father commended his wife and child to her, and appointed no guardian. The child shortly after, with the mother's consent, went to live with Miss M——, with whom she remained until she was seven years old, when the mother died. After the mother's death, her brother, a Catholic, carried off the child by force to America, whence she was brought back by *habeas corpus*. This brother applied for the guardianship of the child. Miss M——, on the other hand, was willing to support and provide for her, if she were brought up a Protestant. The Court refused the brother's application, and on appeal Lord

* (1891) 1 Ch. D. 299.

Justice Lindley laid down that the wife's Catholic relations could have no right to have the child brought up in their religion, and that, though the father had agreed to her being baptized as a Catholic, there was no evidence to show that he would wish her to be taken away from Miss M—— to be brought up a Catholic. There being no father, or mother, or guardian, the child's interests were alone to be consulted, and it would be for her interest to be brought up a Protestant.

And Lord Justice Bowen said—

"What the Court has to look to is the benefit of the child, and in so doing it will pay great respect to the expressed wishes of the father; and further, it will not treat the matter as one of barter, and direct the child to be brought up in the religion of one set of relations, merely because they offer a better provision for the infant. All the circumstances must be considered from the point of view of the infant's true welfare."

Neither of these cases depart from the propositions laid down in *Andrews* v. *Salt*, though perhaps the judgments show a tendency to attach increased importance to the temporal interests of the child.

The most recent case on this subject is *In re McGrath*,* in which North, J., held that, although he would have been bound to order the children to be brought up as Catholics, if application had been made to him at the time of the father's death, yet four years having elapsed, and the mother having died in the meantime after becoming a Protestant, and appointing a Protestant guardian, under all the circumstances it would not be for the welfare of the children to interfere by removing the Protestant guardian, and ordering the children to be brought up Catholics. This decision was afterwards affirmed by the Court of Appeal,† mainly, it would appear, on the ground that the proved indifference of the father in matters of religion was such as to lead the Court to the conclusion that he would not wish the children's religion to be altered again. The principal facts supporting this finding were that the father had allowed one boy, not before the Court, to be brought up in a Protestant orphanage, and whilst sending his other children to a Catholic

* [1892] 2 Ch. 496. † Times, Nov. 11, 1892.

day-school, had allowed them frequently to attend a Protestant chapel and a Protestant Sunday-school. The case, Lindley, L.J., observed, was distinguishable from that of *Hawksworth* v. *Hawksworth*, already referred to, in which James, L.J., said, "There is not the slightest trace of any indifference on the part of the father to the religious education of his child. There is nothing to shew that he would have acquiesced in the child being brought up a Protestant, if he had then been living."

Here the Court drew the inference that the father would not have wished the children's religion to be altered again, and that otherwise it would not be for their benefit to interfere with them. "Under all the circumstances of this case," said Lindley, L.J., delivering the judgment of the Court, "to rely on the wishes or supposed wishes of the father as a ground for bringing some of his children up in the Roman Catholic religion rather than in any other is to rely on a rotten reed. . . . With a father like the late Mr. McGrath, and with like indifference shewn by him, it would be for the welfare of the children to leave them alone." The case illustrates how important it is that a father should make his wishes regarding the religious education of his children clearly known, and abstain from equivocal acts which may afterwards be interpreted as signs of religious indifference.

IV. ILLEGITIMATE CHILDREN.

An illegitimate child in the eye of the law is *filius nullius*, and as was recently observed by Lord Herschell in *Barnardo* v. *McHugh* * there was formerly a disposition on the common law side to construe this rule rigorously. The Poor Law Act (4 & 5 Will. 4, c. 76, s. 71) in casting upon the mother of an illegitimate child the obligation of maintaining it until the age of sixteen, has rendered such a view no longer tenable; and, indeed, in equity, the rules of which are now to prevail in dealing with the custody and control of infants, regard was always had to the mother, the putative father, and the relations on the mother's

* [1891] A. C. 388; *Reg.* v. *Nash*, 10 Q. B. D. 454.

side. It is now determined by *Reg.* v. *Nash*, as explained by Lord Herschell in the House of Lords, that "the desire of the mother of an illegitimate child as to its custody is primarily to be considered, though the Court would not feel bound to accede to the wishes of the mother if likely to prove detrimental to the child." Accordingly, in *Barnardo* v. *McHugh*, an illegitimate child detained in one of Dr. Barnardo's Protestant Homes, was ordered to be delivered up to the mother, who desired that it should be transferred to a Catholic institution of a similar kind.

After the mother's death, the wishes of the putative father will be considered before those of the mother's relatives.*

Neither the mother nor the father of an illegitimate child has any legal right to appoint a guardian, but the Court, in doing so, will take account of their wishes.

V. THE APPOINTMENT OF GUARDIANS.

Although guardians have no power as such to fix the religion in which a child should be brought up, yet their influence over its religious education may often be very great, and the appointment of suitable guardians is the best means of insuring that a parent's wishes shall be carried out after death. We therefore proceed to describe the methods by which they may be appointed.

Under 12 Car. 2, c. 24, a father may appoint a guardian either by will or deed for all his children under twenty and not married. Since the passing of the Wills Act (1 Vict. c. 26, s. 7), he can no longer, if under twenty-one, appoint by will, but he may still do so by deed.

No special form of words is required for the exercise of the power. An appointment by deed may be revoked by a subsequent will. If the appointment be made by will, or codicil, it must be made with all the due formalities.† But if the will contain nothing more than the appointment of a guardian it is not subject or admissible to probate.

The rights of a mother with regard to guardianship have

* *Re Kerr*, 12 L. R. Ir. 642.

† See below.

been greatly enlarged by the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), which important statute is set out in Appendix I. Section 2 provides that after the father's death, the mother shall be the guardian of such infant, either alone where no guardian has been appointed by the father, or jointly with any guardian appointed by the father.

Section 3, subs. 1, enables the mother of any infant to appoint a guardian or guardians after the death of herself and the father; and where guardians are appointed by both parents, they are to act jointly. Subsection 2 further enables the mother to appoint some fit person provisionally to act as guardian jointly with the father after her death, but such appointment is only to take effect where the Court, being satisfied that the father is not fit to be the sole guardian of his children, has confirmed the mother's appointment.

The Court has a general power to appoint guardians, where none have been appointed by the parents, and to remove and replace guardians who are unfit or unwilling to act; it has, also, power to remove a statutory guardian appointed by the mother, if it is satisfied that it is for the welfare of the infants to do so.*

VI. REMEDIES.

Application to the Chancery Division.

The two chief means of invoking the assistance of the Courts with regard to infants are by *habeas corpus* and by application to the Chancery Division. Courts of law, said Lord Cottenham in *In re Spence*,† "interfere for the protection of the person of any body who is suggested to be improperly detained. This Court (a Court of Equity) interferes for the protection of infants *quâ* infants, by virtue of the prerogative which belongs to the Crown as *parens patriæ*, and the exercise of which is delegated to the Great Seal."

Full jurisdiction with regard to the custody and control of infants is vested in the judges of the Chancery Division, to which is assigned the wardship of infants and the care of infants'

* *In Re McGrath*, [1891] 2 Ch. 496. † 2 Ph. 247, 252.

estates by the Judicature Act of 1873, s. 34. This jurisdiction, it has often been held,* does not depend on the infant being a ward of Court, in the sense of being made a party to a suit for the administration of his property. This is well explained by Kay, J., in *Brown* v. *Collins*.†

"In one sense all British subjects who are infants are wards of Court because they are subject to that sort of parental jurisdiction which has been intrusted to the Courts in this country, and which has been administered continually by the Courts of the Chancery Division. It may be exercised, as it has been in many cases such as *In re Fynn* and *In re Spence*, whether they have property or not, although, of course where the infant has no property, it makes it extremely difficult to exercise the jurisdiction at all; respecting the custody of an infant, it has been declared again and again, and especially in these two cases, that it is not the fact of there being property under the control of the Court of Chancery which gives the jurisdiction. The jurisdiction exists from the fact that the infant is a British subject, and the Chancery Division has always exercised that parental jurisdiction over British subjects who are infants. But then we use the words in a special sense. Certainly where an infant, being a British subject, is a party to an action for administration of his property, such infant cannot marry without the leave of the Court. Yet it would be absurd to say that the leave of the Court is requisite for the marriage of every infant who happens to be a British subject, whether the Court has property of that infant to administer or not, and in that sense certainly every subject who is an infant is not a ward of Court in the peculiar sense in which the words are used where the infant is party to an action in which the property of that infant is being administered."

The Court, however, is not so ready to act in the case of infants without property, owing to the greater difficulty of giving effect to its decisions. The usual and convenient course is therefore to make the infant a ward of Court in the fullest

* *Wellesley* v. *Duke of Beaufort*, 2 Russ. 221; *Re Fynn*, 2 De G. & Sm. 481; *Re Spencer*, *ubi sup.*

† 25 Ch. D. at p. 60.

sense by paying in a sum of money, usually £100, though £50 would probably be sufficient, and commencing an action for its administration. The infant will then be a ward of Court in the full sense, and applications regarding it may be made by motions in the action.*

Thus a father may obtain from the Chancery Division an order for the delivery of a child detained out of his custody, and such order will be executed by the sergeant-at-arms.† This is an alternative method to proceeding by *habeas corpus.*

By section 9 of the Guardianship of Infants Act, 1886, applications under the Act are to be made in England to the High Court of Justice, Chancery Division, or to the County Court in which the respondents or any of them reside. Applications made to the County Court may, however, be removed to the High Court by order of a judge of the Chancery Division, and an appeal will lie from the decision of the judge of a County Court to a judge of the Chancery Division.

Where there is an action pending by reason whereof the infant is a ward of Court, applications to the High Court under the Act are to be by summons in the action; otherwise by originating summons.‡

Applications to the County Courts under the Act are to be commenced by filing a petition.

Such a petition for the appointment of a guardian must shew the age of the infant; the nature and amount of the infant's fortune and income; what relations the infant has.§

Habeas Corpus.

It remains to consider the summary method of recovering possession of a child detained in wrongful custody by the writ of *habeas corpus.*

It is now settled practice that application for the writ shall in

* See further "Annual Practice," O. 16, r. 1 (n), "Custody of Infants."

† *G.* v. *L.*, 7 Times Rep. 589.

‡ See Rules of the Supreme Court, under Guardianship of Infants Act, 1886, in "Annual Practice," vol. 2, p. 314.

§ See County Court Rules, 1889, O. XLVII.

the case of infants be made to a judge in Chambers on affidavit setting forth the facts on which the application is grounded.*

The judge may grant the writ *ex parte* if the case is urgent, but will more usually grant a summons calling on the other side to shew cause why the writ should not issue.

If the writ be refused, there is no appeal from the refusal, but the application may be renewed before any other judge of the High Court.

The writ when issued orders the person to whom it is directed to have the body of the person, said to be detained by him, in Court on a day named, "together with the day and cause of his being taken and detained under your custody as is said, by whatsoever name he may be called, therein, to undergo and receive all and singular such matters and things as the said judge shall then and there consider of and concerning him in this behalf, and have you there then this Our writ."

The person to whom the return is addressed is then bound to produce the body of the child before the Court, and to make a return shewing the circumstances under which it came into his custody. Failure to make a proper return is punished by attachment for contempt. The question of the position of a party who has put it out of his power to comply with the writ by illegally parting with the possession of the child to a stranger, has recently been raised in the protracted litigation arising out of Dr. Barnardo's system of managing his homes. In one of the Barnardo cases, *The Queen* v. *Barnardo, In re Tye*,† it appeared that a mother having applied to him for her child, Dr. Barnardo, without the mother's authority, and, therefore, wrongfully, had handed the child over to a lady, who took her away and left no address. A writ of *habeas corpus* having been ordered to issue, Dr. Barnardo made a return to the effect that, as before the issuing of the writ he had parted with the custody of the child to another person who had taken her out of the jurisdiction, it was impossible for him to obey the writ. This was held by the Divisional Court and the Court of Appeal to be a bad return, as the fact that the defendant had wrongfully parted with the child was no excuse for non-com-

* See Crown Office Rules, 235–245. † 23 Q. B. D. 305.

pliance with the writ. An attachment for disobedience was accordingly ordered to issue against him; but further proceedings were suspended pending the decision of the House of Lords in another case—*The Queen* v. *Barnardo, In re Gossage.** There Dr. Barnardo, who had detained the child in illegal custody, set up as a reason for the writ not issuing that he had parted with the possession of the child before the commencement of the proceedings, and was ignorant of its whereabouts. The Court of Appeal, however, held that the writ ought to issue, Lord Esher on the ground that the facts did not shew that it was absolutely impossible for him to obey it, and that having parted with the custody of the child illegally he was still responsible for it; and Fry, L.J., on the ground that the defendant had parted with the possession of the child for the purpose of evading the process of the Court, and that if the writ issued the child might be produced.

The case was carried to the House of Lords, and the decision arrived at by the House † would appear to have seriously impaired the efficacy of the writ as a remedy in cases where a child is being unlawfully detained out of its parents' custody for purposes of proselytism. The House so far sustained the decision of the Court below as to order the writ to issue; on the ground that it was not clearly made out that it was no longer in Dr. Barnardo's power to produce the child, but at the same time decided that the writ ought not to issue merely for purposes of punishment when it appeared that it would be absolutely impossible for the defendant to comply with it. "To use the writ," said Lord Herschell, "as a means of compelling one who has unlawfully parted with the custody of another person to regain that custody, or of punishing him for having parted with it, strikes me at present as being a use of the writ unknown to the law and not warranted by it."

The decision in *Tye's* case, above referred to, must therefore be considered as overruled. Lord Watson, in concurring with Lord Herschell, pointed out that in such cases the defendant might under certain circumstances be attached for contempt:—

* 24 Q. B. D. 283. † 8 Times L. R. 728.

"Where it is shown to the satisfaction of the Court that the person charged with unlawfully detaining a child or adult had *de facto* ceased to have any custody or control, I am of opinion that the writ ought not to issue. A man who parts with the custody of a child after he is served with the process of the Court, or who evades service, in order that he may get rid of such custody, commits a plain contempt for which he is answerable to the Court. Even in that case, I doubt whether it is competent, and I do not doubt that it is inexpedient to enforce the writ *de plano*. The case ought to be dealt with in such circumstances as one of contempt, and the Court has power to pronounce an order which will compel the *quondam* custodian to choose between placing himself in a position which will make him liable to the writ and bearing the consequences of his contumacy. I think it right to add that, in my opinion, no contempt is committed by a person who, lawfully or unlawfully, absolutely gives up the custody of a child from the mere apprehension that by retaining it he may become liable to a writ of *habeas corpus*, and without any notice that such a proceeding will be taken.

When a child is brought before the Court on *habeas corpus*, the Court will proceed in determining its custody, on the principles already explained in this chapter.

It should be noted here, that under 24 & 25 Vict. c. 100, s. 56, it is a misdemeanor unlawfully either by force or fraud to take away or detain any child under the age of fourteen, with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child, of the possession of such child.

CHAPTER V.

Paupers and Criminals.

It will be convenient to treat the subjects of Catholic Paupers and Catholic Criminals in one chapter, assigning to each a separate section.

I. CATHOLIC PAUPERS.

As many of the professors of the Catholic religion in this country are in extreme indigence, and are obliged, from time to time, to seek the means of existence in the workhouse, the Poor Laws may be considered specially to affect Catholics. It is, therefore, desirable to point out what provision is made by them for securing the religious liberty of these poor people.

General Principle.

The Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), provides as follows:—

"Sect. 19. No rules, orders, or regulations of the said commissioners, nor any bye-laws at present in force or to be hereafter made, shall oblige any inmate of any workhouse to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorise the education of any child in such workhouse in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or parent shall object, or, in the case of an orphan, to which the godfather or godmother of such orphan shall object. Provided, also, that it shall and may be lawful for any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to

visit such workhouse for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion."

Creed Register.

In every workhouse a Creed Register is kept; and it is the duty of the Master, upon the admission of any inmate, to inquire into his religious creed and to enter the same in the register. This is provided for by sec. 16 of 31 & 32 Vict. c. 122 (an Act to make further provision for the relief of the poor in England and Wales). The section is as follows:—

"The officer for the time being acting as the master of a workhouse, or as the master or superintendent of a district or other pauper school, shall keep a register of the religious creeds of the pauper inmates of such workhouse or school, separate from all other registers, in such form and with such particulars as shall be prescribed by the Poor-law Board,* by an order under their seal; and shall, as regards every inmate of such workhouse or school, at the date to be fixed by such order, and subsequently upon the admission of every inmate therein, make due inquiry into the religious creed of such inmate, and enter such religious creed in such register."

Provisions as to the religious creed of pauper children are contained in the seventeenth section of the Act:—

"In regard to any child in the workhouse or school under the age of twelve years, whether either of its parents be in the workhouse or not, or whether it be an orphan or deserted child, the master or superintendent shall enter in such register, as the religious creed of such child, the religious creed of the father, if the master or superintendent know or can ascertain the same by reasonable inquiry, or if the same cannot be so ascertained, the creed of the mother of such child, if the same be known to said master or superintendent, or can be by him in like manner ascertained; and the creed of an illegitimate child under the said age shall be deemed to be that of its mother, when that can be ascertained."

An entry once made in the Creed Register cannot be altered save by direction of the Local Government Board. This is expressly enacted in sec. 18.

* For "Poor Law Board," now read "Local Government Board."

"If any question shall arise as to the correctness of any entry in such register, the Poor-law Board may, if they think fit, inquire into the circumstances of the case, and determine such question by directing such entry to remain or to be amended, according to their judgment."

Sec. 19 requires that the Creed Register shall be open to the inspection of ratepayers and of ministers of registered places of religious worship nearest to any workhouse or school.

"Every minister of any denomination officiating in the church, chapel, or other registered place of religious worship of such denomination which shall be nearest to any workhouse or school, or any ratepayer of any parish in the Union, shall be allowed to inspect the register which contains the entry of the religious creed of the inmates, at any time of any day except Sunday, between the hours of ten before noon and four after noon."

Ministers of Religion may Visit and Instruct Paupers.

Sec. 20 authorises such minister to visit and instruct inmates of his creed subject to regulations approved of or ordered by the Local Government Board.

"Such minister may, in accordance with such regulations as the said Board shall approve of or by their order prescribe, visit and instruct any inmate of such workhouse or school entered in such register as belonging to the same religious creed as such minister belongs to, unless such inmate, being above the age of fourteen, and after having been visited at least once by such minister, shall object to be instructed by him."

Paupers at Liberty to Attend their own Place of Worship.

By sec. 21 inmates for whom no religious service of their own creed is provided in the workhouse, may, subject to regulations approved of or ordered by the Local Government Board, attend their own proper places of worship.

"Every inmate for whom a religious service according to his own creed shall not be provided in the workhouse, shall be permitted, subject to regulations to be approved of or ordered by the Poor-law Board, to attend, at such times as the said Board shall allow, some place of worship of his own denomination within a convenient distance of the said workhouse, if there be such in the opinion of the Board. Provided that the Guardians may, for abuse of such permission previously granted, or on some other

special ground, refuse permission to any particular inmate, and shall in such case cause an entry of such refusal, and the grounds thereof, to be made in their minutes."

The Religion of Workhouse Children.

Sec. 22 provides safeguards for the religious creed of workhouse children:—

"No child, being an inmate of a workhouse or such school as aforesaid, who shall be regularly visited by a minister of his own religious creed for the purpose of religious instruction, shall, if the parents or surviving parent of such child, or in case of orphans or deserted children, if such minister make request in writing to that effect, be instructed in any other religious creed than that entered in such register as aforesaid, except any child above the age of twelve years who shall desire to receive instruction in some other creed, or to attend the service of any other religious creed, and who shall be considered by the Poor-law Board to be competent to exercise a judgment upon the subject."

It has been held by the Local Government Board that, in view of this section, Catholic pauper children cannot be required and ought not to be allowed, to attend a domestic religious service in the workhouse, consisting of Protestant hymns, prayers and Bible-reading.*

Catholic Religious Instructors.

It was held in *The Queen* v. *Haselhurst* † that under the General Order of the Local Government Board of 19th August, 1867, a

* This was expressly laid down by the Local Government Board in 1879. "Articles 114, 124, of the General Consolidated Order," the Board said, "must be taken in connection with the provisions of the statutes relating to the religious instruction of workhouse inmates who do not belong to the Established Church. It appears to the Board, for example, that the reading of prayers, in pursuance of Art. 124, is a religious service within the meaning of 4 & 5 Will. 4, c. 76, s. 19, and 31 & 32 Vict. c. 122, s. 22, and, therefore, having regard to the latter enactment, that children who are not entered in the Creed Register as members of the Church of England cannot lawfully be required, or even permitted to attend the prayers in question, if their parents, or, in the case of orphan and destitute children, the minister of their own creed, who regularly visits them, objects to their doing so. As regards the instruction of the children in the principles of the Christian religion, as prescribed by Art. 114, the statutes above referred to virtually prohibit children from being instructed in any other religious creed than their own."

† L. R. 13 Q. B. D. 253; 53 L. J. M. C. 127; 51 L. T. (N.S.) 95.

board of guardians may employ a Catholic Religious Instructor in their workhouse upon such terms and conditions as shall appear to them suitable. Stephen, J., in his judgment, made the following remarks:—

"The Order on which this matter turns, is the Order to the Poor-law Guardians dated in 1867, and the Order says that 'the Guardians may employ such persons as they shall deem requisite in or about the workhouse or workhouse premises, or on the land occupied for the employment of the pauper inmates of the workhouse, or otherwise, in or about the relief of the indoor poor, upon such terms and conditions as shall appear to them to be suitable.'

"Article 3 says that except so much thereof as relates to the quarterly or other periodical payments of the officers, it is not to apply to the clerk of the Guardians, or to the chaplain, or to certain other persons. Now the question is whether that authorizes the appointment of a Roman Catholic clergyman who is not called a chaplain, and who has not the specific duties of a chaplain, but who does many things which would naturally be done by a chaplain; whether that authorizes the appointment of a Roman Catholic chaplain for that purpose. And I must say it appears to me clear that it does. There is no restriction to the persons who are to be employed, and although, no doubt, the greatest prominence in the drift of these articles is given to persons in a very inferior condition to chaplains, the words are wide enough to include a chaplain, and I am inclined to think the intention was they should include chaplains,—and I use the word chaplain because it is the plainest word to use,—clergymen employed upon religious duties. . . . I may call them Nonconformist chaplains, chaplains other than the chaplain who is a member of the Church of England as by law established."

It may be observed that there is no statute, or order of the Local Government Board, expressly conferring upon a priest attending a workhouse or other Poor Law institution, a right to distribute Catholic prayer-books, and books of religious instruction, among those to whom he ministers. But such distribution would seem to form a proper adjunct to his ministrations.*

* At p. 131 of Glen's Poor Law Orders will be found a brief account of the case:—"*The Queen* v. *The Guardians of St. Luke's, Chelsea,*" which was settled by an agreement between the parties—the Rev. Edward Bagshawe, and the Guardians—as to the terms upon which Father Bagshawe should be permitted to visit the workhouse. One of the terms of agreement was, that the Catholic inmates might be supplied with certain religious books therein specified, and with any others to be approved by the Guardians.

The Workhouse Chapel.

It has been held by the Local Government Board that the workhouse chapel may lawfully be used for Catholic services with the consent of the Guardians.*

Catholic Chaplains in Lunatic Asylums.

It should be noted that s. 276 of the Lunacy Act, 1890, authorizes the committee of a county lunatic asylum to appoint a minister of any religion to attend the patients of the religious persuasion to which the minister belongs; and to allow him such remuneration for his services as they may think fit.

Burial of Paupers.

The burial of paupers is regulated by the 7 & 8 Vict. c. 101, s. 31. As a general rule a pauper should be buried in the churchyard, or in a consecrated (Church of England) burial-ground of the parish where he last resided, but the burial in such churchyard or consecrated burial-ground may be dispensed with by desire of the deceased, or husband, wife or next of kin, in which case the guardians may, apparently, authorize the burial anywhere at their discretion. There is no provision of

* Letter from The Local Government Board to The Guardians of the Poor at Derby.

"Local Government Board, Whitehall,
"*7th November*, 1884.

"Sir,

"I am directed by the Local Government Board to advert to your letter of the 16th September last, in which you inquire whether the Guardians of the Derby Union can lawfully allow Roman Catholic services to be held in the workhouse chapel; and in reply, to state generally, that it is competent to the Guardians, if they think fit, to permit services to be held in the workhouse by Roman Catholic as well as Nonconformist clergy, and that the Board are not aware of any legal impediment to the use of the chapel at the workhouse for such a purpose, including the celebration of the Mass. The services should, however, be held at such times as will not interfere with the discipline of the workhouse, nor with the ministrations of the appointed Chaplain. I am directed to add that the workhouse chapel could not be legally used for the purpose referred to without the consent of the Guardians.

"I am, &c.,
"C. N. Dalton, *Assistant Secretary.*"

the law requiring the Master of a workhouse to give notice for the death of a pauper to any minister of the religious persuasion to which the pauper belonged. When a pauper is buried in a Catholic burying-ground the Guardians may make a reasonable payment for the grave, and may pay a reasonable fee to the officiating priest.*

Transfer of Catholic Pauper Children from the Workhouse Schools to Schools of their own Religion.

So much as to the provisions made for the practice of their religion by Catholic paupers in the workhouse. We now come to the subject of the transfer of Catholic pauper children from the workhouse to schools of their own religion. This subject is one of very great practical importance.

The "Act to provide for the education and maintenance of pauper children in certain schools and institutions" (25 & 26 Vict., c. 43) provides "that the Guardians of any Union or parish may send any poor child to any school certified as hereinafter mentioned, and supported wholly or partially by volun-

* Extract from a letter addressed by the Local Government Board on the 26th December, 1889, to the Rev. A. H. Hazeland, The Presbytery, Lutterworth.

"With regard to the question asked in your letter, the Board direct me to state, that having regard to the 7 & 8 Vict. c. 101, s. 31, and the 28 & 29 Vict. c. 79, s. 10, it appears to them that when an inmate of a workhouse is buried by the Guardians, the proper place for the interment is, unless the deceased person, or the husband or wife, or next-of-kin of such person has otherwise desired, the churchyard or other consecrated burial-ground of the parish in which the pauper last resided prior to his removal to the workhouse, and that you are not empowered to claim to bury a Roman Catholic inmate of the workhouse in the burial-ground attached to the Roman Catholic Chapel at Lutterworth, in the absence of the expression of any wish on the part of the deceased person, or of the husband or wife, or next-of-kin of such person.

"As regards burial fees, the Board direct me to state that where an inmate of the workhouse is buried in the burial-ground of the Roman Catholic Chapel in pursuance of a wish of the kind above referred to, it seems to them that it is competent for the Guardians to make a reasonable payment for the ground, and that where the service is conducted by you, whether in the churchyard of the parish in which the deceased last resided prior to his removal to the workhouse, or in the Roman Catholic burial-ground, the Guardians may pay you a reasonable sum for your services, and charge the same as part of the expenses of the burial. The amount, however, of any such payment is not fixed by law, and is a matter for arrangement with the Guardians."

tary subscriptions, the managers of which shall be willing to receive such child, and may pay out of the funds in their possession the expenses incurred in the maintenance, clothing, and education of such child therein during the time such child shall remain at such school (not exceeding the total sum which would have been charged for the maintenance of such child if relieved in the workhouse during the same period),* and in the conveyance of such child to and from the same, and, in case of death, the expenses of his or her burial." (Sec. 1.)

It will be observed that such school must be "certified." The certificate is obtained from the Local Government Board (sec. 2), and may at any time be withdrawn by the Board if they are dissatisfied with the condition or management of the school. The following form may be used in applying for a certificate:—

TO THE SECRETARY TO THE LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.

SIR,

We, being the † of a School ‡ supported wholly or partially by voluntary subscriptions, beg to request that the Local Government Board will, under the second section of the above Act, cause an examination to be made into the condition of the above-mentioned school, and should the result of such examination appear to them satisfactory, will certify such School as fitted for the reception of such children or persons as may be sent there

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* The Act of the 45 & 46 Vict. c. 58, provides that "the Guardians of any Union who send any pauper child to a school certified under the Act of the 25th and 26th years of the reign of Her present Majesty, chapter 43, may pay the reasonable expenses incurred in the maintenance, clothing, and education of such child whilst in such school, to an amount not exceeding such rate of payment as may be sanctioned by the Local Government Board for pauper children sent to such school, anything contained in the said Act to the contrary notwithstanding." (Sec. 13.) And the Local Government Board, in a memorandum addressed in May, 1882, to the Clerks to the Guardians throughout the country, remarks:—"It will be observed that the Board's consent will not be required to the sum to be paid for an individual child, but that the sum is not in any case to exceed the rate sanctioned by them in respect of the school. The Board will give consideration to any application which may be made to them by the managers of a certified school to sanction a rate of payment for their school; and the amount to be paid in any particular case will then be a matter for arrangement between the Guardians and the managers, provided that it does not exceed the rate approved by the Board."

† Insert "managers," or "major part of the managers," as the case may be.

‡ Give the name, address, and object of the school.

by the Guardians of Unions or separate parishes in pursuance of the said Act. We remain, sir,

Your obedient servants,

———.

Applications for transfer of a child must be addressed to the Guardians of the Union in the workhouse of which the child is. It may be couched in the following terms :—

To the Board of Guardians of the . I, the undersigned, hereby apply to the Board of Guardians to order that , a pauper child, aged years, not belonging to the Established Church, but to the Roman Catholic religion, now relieved in the workhouse school of the in the county of , shall, if they think fit, be sent to the school established at for the reception, maintenance, and education of children of the religion to which such child belongs, and which school has been duly certified by the Local Government Board under the Statute of the 25 and 26 Vict. c. 43.

Signed this day of at , in the parish of , in the county of . (Signature or mark of applicant) . (Description of applicant) . (Place of abode) . Witness . (Name) . (Description) . (Place of abode) .

In case Guardians decline to accede to the application for the transfer of a Catholic child to a certified school of its own religion, the Local Government Board have the power, under the 29 & 30 Vict. c. 113, s. 14, to order such transfer. The following is the section by which this power is conferred :—

"That if the parent, step-parent, nearest adult relative, or next-of-kin of any child not belonging to the Established Church, relieved in a workhouse or in a district school, or in case there should be no parent, step-parent, nearest adult relative, or next-of-kin, then the god-parent of such child, make application to the said Board [the Local Government Board] in such behalf, the Board may, *if they think fit*, order that such child shall be sent to some school established for the reception, maintenance, and education of children of the religion to which such child shall be proved to belong, and duly certified by the Poor-law Board under the statute of the 25th & 26th Vict. c. 43; and the Guardians of the Union or parish to which such child shall be chargeable shall, according to the terms of such order, cause the child to be conveyed to such school, and pay the costs and charges of the maintenance, lodging, clothing, and education of the said child therein, and all the provisions of the said statute shall thenceforth apply to the said child."

An application to the Local Government Board under this section may be made in this form, if the applicant is a relative or god-parent:—

TO THE LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

I, the undersigned, being the [and nearest adult relative, or next-of-kin] of a child aged years, not belonging to the Established Church, but to the Roman Catholic religion, now relieved in the workhouse school of the parish of [*or*] in the workhouse school of the Union, in the county of , apply to the Local Government Board to order that such child shall, if they think fit, be sent to the school established at for the reception, maintenance, and education of the children of the religion to which such child belongs, and which school has been duly certified by the Local Government Board under the Statute of the 25 and 26 Vict. c. 43.

I offer the accompanying documents and testimonials in proof of my being such of the said child, and that such child belongs to the said Roman Catholic religion.

Signed this day of 188 at in the parish of in the county of . Signature or mark of applicant . Description of applicant . Place of abode of applicant . Made in the presence of . Name of witness . Description of witness . Place of abode of witness .

* I the undersigned, residing at in the parish of in the county of , do solemnly and sincerely declare that , and I make this solemn declaration conscientiously believing the same to be true, and by the virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty King William the Fourth intituled "An Act to repeal an Act of the present Session of Parliament intituled an Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary Oaths."

Declared at this day before me .

In case the applicant is not a relative or god-parent, the

* This declaration must be signed in all cases either by a police, or county, or borough magistrate, or by a commissioner appointed to receive oaths and declarations.

following form should be used, the solemn declaration appended to the foregoing form being added to it:—

TO THE LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

I, the undersigned, of (place of residence) in the county of (state profession, or other description), hereby apply to the Local Government Board to order that , an orphan, (*or* illegitimate *or* deserted) child, aged years, not belonging to the Established Church, but to the Roman Catholic religion, now relieved in the workhouse school of the parish of (*or* in the workhouse school of the Union), in the county of , shall, if they think fit, be sent to the school established at for the reception, maintenance, and education of children of the religion to which the said child belongs, and which school has been duly certified by the Local Government Board under the Statute of the 25 & 26 Vict. c. 43.

I offer the accompanying documents in proof that such child belongs to the said Roman Catholic religion.

Signed this of , at , in the parish of , in the county of .

(Signature, &c., as before.)

The following are the documents required by the Local Government Board when application is made to them for the removal of Catholic children to a certified school:—

In the case of Legitimate Children who are neither Deserted nor Orphans.

1st. Baptismal certificate of the child.

2nd. Form of application to the Local Government Board, signed by the *father*. If the father is dead, then—1st. Baptismal certificate of the child. 2nd. Proof that the father was a Catholic. Such proof may be afforded either by the certificate of his baptism or of his marriage in a Catholic church, or by "declaration" by the mother or other person who knew him to be a Catholic. 3rd. Certificate or "declaration" of his burial or death. 4th. Form of application to the Poor-law Board, signed by the mother.

In the case of Orphan Legitimate Children.

1st. Baptismal certificate of the child.

2nd. Proof that the *father* was a Catholic, either by the certificate of his baptism or of his marriage in a Catholic church, or by "declaration" by some person who knew him to be a Catholic.

3rd. Proof of the father's death or burial.

4th. Proof of the mother's death or burial.

5th. Application to the Local Government Board, signed by some relative, next-of-kin, or god-parent, or, in default of these, by some other adult person. With this application should be enclosed an explanation of the reason why some relative, next-of-kin, or god-parent does not apply.

*In the case of Deserted Legitimate Children.**

1st. Baptismal certificate of the child.

2nd. Proof of father's religion, by certificate of baptism or marriage in a Catholic church, or by "declaration" signed by a magistrate.

3rd. Proof that the child is a deserted child; which should be furnished by a "declaration" containing the date and circumstances of the desertion, made by some person who is able to testify to the facts.

4th. Form of application to the Local Government Board, signed by some relative, next-of-kin, or god-parent.

5th. Proof by certificate or declaration that the person making application is such relative or god-parent.

If some other person, in default of a near relative or god-parent, make the application, then an explanation is required why some relative or god-parent does not apply. In such a case, a statement that they were unwilling to sign the application would be accepted.

In the case of Illegitimate Children.†

1st. Baptismal certificate of the child.

2nd. Form of application, signed by the mother.

If the mother is dead, then—1st. Baptismal certificate of the child. 2nd. Proof of the death or burial of the mother. 3rd. Proof of the mother's religion. 4th. As the child has no legal relative after the death of the mother, an application signed by the god-parent. In default of a god-parent, the application may be signed by any other adult person, and should be accompanied by an explanation that the god-parent is dead, or cannot be found, or is unwilling to sign the application.

The following sections of the Act should be noted:—

3. If the Poor Law Board should be of opinion that any person is aggrieved by any child being so sent or kept at such school as

* By the 31 & 32 Vict. c. 122, s. 23, the Statutes of the 25 & 26 Vict. c. 43, and 29 & 30 Vict. c. 113, are extended to deserted and illegitimate children.

† See preceding note.

aforesaid, the Board may order any such child to be removed, and the guardians shall forthwith cause such child to be removed from the school, and every engagement previously entered into for the payment of the charges of such child shall thereupon cease, and become void for the future.

4. Every school wherein any such child shall be received shall be open to the visitation and inspection of any inspector appointed by the Poor Law Board, and he shall be empowered to make any examination into the state and management of the same which he shall deem requisite, and the condition and treatment of the said children therein, and shall make his report thereon to the said Board; and the guardians by whom any child may have been sent to any such school as aforesaid may from time to time appoint any one of their body to visit and inspect such school, and such school shall at all reasonable times be open to such visitation or inspection.

5. The guardians may at any time, at their discretion, and shall, upon the requisition of the managers of the school, or upon the withdrawal of the certificate, as herein provided, cause any such child to be removed from any such school, and brought back to their parish or union.

6. No child shall be sent to such school unless he or she be an orphan, or deserted by his or her parents or surviving parent, or be one whose parents or surviving parent shall consent to the sending of such child to the said school.

7. Nothing herein contained shall enable the guardians to keep any child in any school against the will of such child, if above the age of fourteen, or of the parents or surviving parent of such child, whatever be the age of the child.

9. No child shall be sent under this Act to any school which is conducted on the principles of a religious denomination to which such child does not belong.

10. The several words used in this Act shall be construed as in the Act of the fourth and fifth years of William the Fourth, chapter 76: and the word "school" shall extend to any institution established for the instruction of blind, deaf, dumb, lame, deformed or idiotic persons, but shall not apply to any certified reformatory school.

Deaf and Dumb Pauper Children.

The 31 and 32 Vict. c. 122, s. 42, provides:—

The guardians of any union or parish may, with the approval of the Poor-Law Board, send any poor deaf and dumb or blind child to any school fitted for the reception of such child, though such school shall not have been certified under the provisions of the Act of the twenty-fifth and twenty-sixth years of Victoria, chapter forty-three.

Boarding out of Pauper Children.

The boarding out of pauper children is regulated by two general orders of the Local Government Board, entitled respectively, "The Boarding Out Order, 1889," and "The Boarding of Children in Unions Order, 1889." Both these orders provide that "in no case shall a child be boarded with a foster-parent of a religious creed different from that to which the child belongs;" and that "before receiving any child to be boarded with him, the foster-parent shall sign an undertaking that he will take care that the child shall attend duly at church or chapel, according to the religious creed to which the child belongs." The orders further provide that "the child's creed shall be ascertained from the Creed Register, if it be entered therein."

II. CATHOLIC CRIMINALS.

The Religious Rights of Catholic Prisoners.

The religious rights of Catholic prisoners are secured by two Acts of Parliament, viz.: the Prison Ministers Act, 1863, and the Prison Act, 1865. We give the principal part of the first-mentioned statute.

Section 3 provides for the appointment of additional ministers to prisons.

3. Where the number of prisoners confined in any prison to which this Act applies, and belonging to some church or religious persuasion differing, if in England, from the Church of England, and if in Scotland, from the Church of Scotland, is so great as, in the opinion of the Justices, County Board, or other persons having the appointment of chaplain in the said prison, to require the ministrations of a minister of their own church or persuasion, the said Justices, County Board, or other persons may appoint a minister of such last-mentioned church or persuasion to attend at the said prison on the prisoners of his own church or persuasion, and they may, if they think fit, award to him a reasonable sum as a recompense for his services, such sum to be deemed a part of the expenses of the prison to which he is appointed, and to be paid out of the funds legally applicable to the payment of such expenses.

The section goes on to lay down regulations as to the admission of ministers :—

The Visiting Justices of any prison may, if they think fit, without a special request being made by, but not against the will of, any prisoner of a church or religious persuasion differing from that of the Established Church, permit a minister of the church or persuasion to which such prisoner belongs (if no appointment of such a minister has been made under this Act) to visit such prisoner at proper and reasonable times, under such restrictions imposed by them as may guard against the introduction of improper persons, and may prevent improper communications; provided that any prisoner shall, on request, be allowed, subject to the rules of the gaol, to attend the chapel or to be visited by the chaplain of the gaol. Every minister appointed or permitted to visit prisoners under this Act shall hold his appointment or permission to visit during the pleasure of the authority by whom he was appointed or permitted to visit, and shall conform in all respects to the regulations of the prison at which he attends. No minister shall be appointed under this Act for any prison in which there is not a chaplain of the Established Church.

Section 4 requires the registration of the religion of prisoners :—

4. The keeper or other person performing the duties of keeper of a prison on receiving into his custody any prisoner shall enter his name in a book to be provided for the purpose, with the addition of the church or religious persuasion to which the prisoner shall declare himself to belong, and the said keeper or other person shall from time to time give to any minister appointed or permitted to visit prisoners in the prison a list of the prisoners so declared to belong to the church or persuasion of such minister, and no such minister shall be permitted to attend or visit any prisoner belonging to any religious persuasion differing from that to which such minister belongs.

Section 5 enacts that so much of section 30 of 4 Geo. IV. as provides for visits of chaplains shall not apply to prisoners visited by other ministers :—

5. So much of the thirtieth section of the said Act passed in the fourth year of His late Majesty King George the Fourth, chapter sixty-four, as provides "that the chaplain shall frequently visit every room and cell in the prison occupied by prisoners, and shall direct such books to be distributed and read,

and such lessons to be taught, in such prison, as he may deem proper for the religious and moral instruction of the prisoners therein, and that he shall visit those who are in solitary confinement," shall not apply to any prisoner who is attended or visited by a minister of a church or persuasion differing from the Church of England, except when the visits of any such minister shall have been discontinued for the period of fourteen days; and no prisoner belonging to any church or religious persuasion shall be compelled to attend any religious service held or performed by any chaplain, minister, or religious instructor of a church or religious persuasion to which the said prisoner does not belong.

By Regulation 46, in Schedule I. of the Prison Act, 1865, it is provided that "no prisoner shall be compelled to attend any religious service held or performed, or any religious instruction given by the chaplain, minister or religious instructor of a church or persuasion to which the prisoner does not belong." And the next regulation of the Act enacts, "If any prisoner is of a religious persuasion differing from that of the Established Church, and no minister has been appointed to attend at the prison on the prisoners of that persuasion, the Visiting Justices shall permit a minister of such persuasion to be approved by them to visit such prisoner at proper and reasonable times under such restrictions as may be imposed by the Visiting Justices to guard against the introduction of improper persons and prevent improper communications, unless such prisoner expressly objects to see such minister."

Appointment and Remuneration of Catholic Ministers to Prisons.

Catholic ministers to prisons are appointed by the Home Secretary. Their remuneration is regulated by a scale given in the Report—which we print in Appendix N—of the Select Committee of the House of Commons on Prisons and Prison Ministers Acts (1870).

Juvenile Offenders.

The commitment of offenders to and their status at a certified reformatory school is regulated by the following sections of the Reformatory Schools Act, 1866 :—

14. Whenever any offender who, in the judgment of the Court, justices, or magistrate before whom he is charged, is under the age of sixteen years, is convicted on indictment or in a summary manner, of an offence punishable with penal servitude or imprisonment, and is sentenced to be imprisoned for the term of ten days or a longer term, the Court, justices, or magistrate may also sentence him to be sent, at the expiration of his period of imprisonment, to a certified reformatory school, and to be there detained for a period of not less than two years and not more than five years:

Provided always, that a youthful offender under the age of ten years shall not be so directed to be sent to a reformatory school unless he has been previously charged with some crime or offence punishable with penal servitude or imprisonment, or is sentenced in England by a judge of assize or court of general or quarter sessions, or in Scotland by a circuit court of justiciary or sheriff.

The particular school to which the youthful offender is to be sent may be named either at the time of his sentence being passed, or within seven days thereafter, by the Court, justices, or magistrate who sentenced him, or in default thereof at any time before the expiration of his imprisonment by any visiting justice of the prison to which he is committed.

In choosing a certified reformatory school, the Court, justices, magistrate, or visiting justice shall endeavour to ascertain the religious persuasion to which the youthful offender belongs, and, so far as is possible, a selection shall be made of a school conducted in accordance with the religious persuasion to which the youthful offender appears to the Court, justices, magistrate, or visiting justice to belong, which persuasion shall be specified by the Court, justices, magistrate, or visiting justice.

It shall be lawful, upon the representation of the parent, or in the case of an orphan then of the guardian or nearest adult relative, of any offender detained in any such school, for a minister of the religious persuasion of such offender, at certain fixed hours of the day, which shall be fixed by the Secretary of State for the purpose, to visit such school for the purpose of affording religious assistance to such offender, and also for the purpose of instructing such offender in the principles of his religion.

15. The gaoler of every prison having in his custody any youthful offender sentenced to be sent to a reformatory school, shall, at the appointed time, deliver such offender into the custody of the superintendent or other person in charge of the school in which he is to be detained, together with the warrant or other document in pursuance of which the offender was imprisoned and is sent to such school.

The possession of the warrant or other document in pursuance of which a youthful offender is sent to a certified reformatory

school shall be a sufficient authority for his detention in such school.

16. The parent, step-parent, or guardian, or if there be no parent, step-parent or guardian, then the god-parent or nearest adult relative of any youthful offender sent, or about to be sent to a certified reformatory school which is not conducted in accordance with the religious persuasion to which the offender belongs, may apply to the Court by whom such offender was sentenced to be sent to a reformatory school, or to the visiting justices of the prison to which he was committed by that Court, or to the justices or magistrate by whom he was sentenced to be sent to a reformatory school (or justices or a magistrate having the like jurisdiction), to send or to remove such offender to a certified reformatory school conducted in accordance with the offender's religious persuasion, and the Court, visiting justices, justices, or magistrate (as the case may be) shall, upon proof of such offender's religious persuasion, comply with the request of the applicant provided,—

First, that the application be made before the offender has been sent to a certified reformatory school, or within thirty days after his arrival at such a school;

Secondly, that the applicant show to the satisfaction of the Court, visiting justices, justices, or magistrate that the managers of the school named by him are willing to receive the offender.

CHAPTER VI.

Schools.

The Annual Code issued by the Education Department under statutory authority sets forth as clearly and concisely as may be the existing system of public elementary education in force in this country, and no useful purpose would be served by endeavouring to epitomise a body of rules with which every one responsible for the management of a Catholic school in receipt of State aid, must necessarily be familiar. But the subject is one of almost unequalled importance for Catholics at large, and it may therefore be well to sketch briefly the rise of the present system, to note its most salient features and the points at which Catholic interests are especially affected. There are several things, too, with regard to industrial schools, which fall clearly within the scope of this Manual.

Until within the last sixty years, the work of public elementary education was purely voluntary. The system of annual grants dates from the year 1833, when £20,000 was voted, in aid of the erection of schools under the supervision of the two leading Protestant educational bodies, the National Society and the British and Foreign School Society. In 1839 the grant was increased to £30,000, and a committee of the Privy Council was appointed by Order in Council to supervise the expenditure of the grant.

In the same year the restriction of the grant to schools in connection with the above-named societies, was removed, and in 1846 grants were first made towards maintaining, as well as towards erecting, schools. In 1847 Catholic schools were admitted to share in the grant, and the Catholic Poor School Committee was founded to represent the educational interests of

Catholics. In 1853 the principle of a capitation grant for each child putting in a fixed number of attendances was sanctioned. Thus far, it should be noticed, the provision of religious teaching had been an essential condition of earning the grant, and in the last-mentioned year the Education Committee definitely refused a grant to a school conducted on avowedly secularist principles.

It was the custom of the Department to require the insertion of certain clauses in the trust deeds of schools erected by their aid, and a form of deed for Catholic schools was agreed upon between the Department and the Poor School Committee. This form is printed in Appendix O, both as an illustration of the former system, and because it is on such trusts that a large number of Catholic school buildings are still held. As will be seen, this form of deed is cumbersome and inconvenient, and since the abolition of the system of building school grants it has fallen into merited disuse.

The present system, as every one knows, dates from Mr. Forster's Elementary Education Act of 1870 (33 & 34 Vict. c. 75), which established school boards.

The object of the measure was to provide that there should be a sufficiency of "efficient" and "suitable" schools in every district to satisfy its educational wants. School boards were to be established where a deficiency existed, and were to be empowered to levy a rate for the erection and maintenance of the necessary schools. The school boards, according to the intention of the framers of the measure, were to supplement, not to supersede, the system already provided by voluntary effort throughout the country. Under the Act of 1870 school boards were to be provided—

(1) At the initiative of the Education Department, when after due notice of a deficiency in the district, voluntary bodies had failed to make it good.

(2) On the application of the council of a borough, or, outside a borough, of a majority of ratepayers qualified to vote at a school board election.

(3) In cases of deficiency arising from the closing of a voluntary school.

The principle of the measure is stated generally in section 5, which enacts that—

"There shall be provided for every school district a sufficient amount of accommodation in public elementary schools, as afterwards defined, available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made."

The late Mr. W. E. Forster explained the meaning of the above clause on moving the first reading of the Bill as follows:—

"I may at once state that if in any one of these (school) districts we find the elementary education to be sufficient, efficient, and suitable, we leave that district alone. By sufficient, I mean, if we find that there are enough schools; by efficient I mean, schools which give a reasonable amount of secular education; and by suitable I mean schools to which, from the absence of religious or other restrictions, parents cannot reasonably object, and, I may add, that for the purpose of ascertaining the condition of these districts we count all schools that will receive our inspectors, whether private or public, whether aided or unaided by Government assistance, whether secular or denominational." Hansard, vol. 199, p. 445.

And Sir Hugh Owen in his standard work on the Education Acts, after quoting the above passage at p. 68, goes on as follows:—

"Efficient and suitable provision has been held to be made when there has been efficient elementary school education within a reasonable distance of the house of every child who required elementary instruction, of which he could avail himself on payment of a reasonable fee without being required to attend any religious instruction to which the parent objected. The school provision of a district cannot be regarded as suitable unless there is some school or other under a conscience clause within reach of children whose parents wish them to have that protection. There is nothing in the Act to prevent a school from being recognised as giving efficient and suitable provision because the teacher is not certificated."

Since the Free Education Act (54 & 55 Vict. c. 56, s. 5), which we give in Appendix P, there must be sufficient accommodation without payment of fees.

After providing for the necessary school accommodation

throughout the country, the next step was to make education compulsory, and the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), made it incumbent on every parent to provide efficient elementary instruction for his children. Catholic schools at which such efficient instruction is provided are either—

(1.) Public elementary schools in receipt of State aid;

(2.) Certified efficient schools, not in receipt of State aid.

Public elementary schools must be conducted in accordance with the regulations of the Education Department. Certified efficient schools, not being in receipt of State aid, are under less stringent control, but the standard of efficiency exacted from them is now nearly the same as that required from schools conducted as public elementary schools. It is naturally, therefore, in the latter category, that the great majority of Catholic schools are to be found.

Schools not certified as efficient would be practically useless, as attendance at them would not satisfy the compulsory clauses of the Act of 1876.

In this chapter will be considered:—

I. General principles applicable to public elementary schools.
II. Special provisions of the law as to religion and the conscience clause.
III. The regulations as to Government grants.
IV. The statutory requirements as to attendance.
V. The legislation regarding industrial schools.

I. GENERAL PRINCIPLES APPLICABLE TO PUBLIC ELEMENTARY SCHOOLS.

An "elementary school" is defined by sec. 3 of the Act of 1870, as—

"A school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence per week."

No definition is anywhere given of what is to be included in the term "elementary education," and the tendency of successive codes has been to increase the number of subjects it contains.

The term "public elementary school" is defined by sec. 7 as follows:—

"Every elementary school which is conducted in accordance with the following regulations shall be a public elementary school within the meaning of this Act; and every public elementary school shall be conducted in accordance with the following regulations (a copy of which regulations shall be conspicuously put up in every such school); namely,

"(1.) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs:

"(2.) The time or times during which any religious observance is practised, or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end, or at the beginning and the end of such meeting, and shall be inserted in a time-table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every schoolroom; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school:

"(3.) The school shall be open at all times to the inspection of any of Her Majesty's Inspectors, so, however, that it shall be no part of the duties of such Inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in any religious subject or book:

"(4.) The school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant."

Sub-sections 1 and 2 are what is commonly known as the

conscience clause, and will be dealt with below. We may first, however, consider some of the other conditions necessary for obtaining the Parliamentary grant.

Under sec. 97 of the Act of 1870 the conditions of obtaining a Parliamentary grant are to be fixed by the Education Department for the time being.

In the Code of 1892 the following are some of the chief requirements :—

Art 77. The school must be conducted as a public elementary school.

78. No child may be refused admission as a scholar on other than reasonable grounds.

79. The time-table must be approved by the Inspectors of the Department.

80. *The school must not be unnecessary*

81. The school must not be conducted for private profit or farmed out by the managers to the teachers. The managers must be responsible for the payment of the teachers, and all other expenses of the school.

82. The principal teacher must be certificated. (For exceptions, see Code.)

83. A day school must have met not less than 400 times in a year.

The school must have been inspected on behalf of the Department, the premises must be suitable, and the school efficient, &c., see Code, 1892, Arts. 84–92.

Many of these requirements are very difficult to comply with in poor parishes, but the only one which need detain us as involving at one time a distinct hardship to Catholics is Article 80, providing the school applying for a grant must not be unnecessary.

This Article is based on sect. 98 of the Act of 1870, which provides as follows :—

If the managers of any school which is situate in the district of a school-board acting under this Act, and is not previously in receipt of an annual parliamentary grant . . . apply to the Education Department for a parliamentary grant, the Education Department may, *if they think that such school is unnecessary*, refuse the application.

The Education Department shall cause to be laid before both Houses of Parliament in each year, a special report stating the

cases in which they have refused a grant under this section during the preceding year, and their reasons for each such refusal.

The words in italics appear to leave the responsibility of deciding whether the new school is necessary or not to the Department; and in regard to districts where there is no school-board, they have accepted the responsibility and laid down the following workable and not unsatisfactory test in a note to Article 80 of the Annual Code.

In a district not under a school-board, a school is not deemed to be unnecessary, if at the date of its application for an annual grant it is recognised as a certified efficient school, and has had during the twelve months preceding such application an average attendance of not less than thirty scholars.

In districts under a school board, the Department are in the habit of referring the application for a new voluntary school in the district to the local school-board; and, if the board reports that no new school is required, or that the board is prepared itself to supply the existing deficiency, the Department at one time accepted such report as conclusive grounds for refusing the application.

One natural result of this practice was to prevent the applications of Catholic schools in many cases being dealt with on their merits, either on account of the anti-Catholic feeling of the board, or the general Nonconformist dislike to denominational education of all kinds. A still graver objection was that it ignored the conscientious objections of Catholic parents to undenominational education; and, whilst providing unnecessary accommodation in board schools, deprived the schools actually attended by Catholic children of the benefit of the Government grant. Mr. T. W. Allies, the Secretary of the Poor School Committee, complained strongly of this state of things in his evidence before the Royal Commission of 1886.

"We should not," he said, "rest with anything short of its being left still, as the Act leaves it, to the decision of the Education Department, and that the Education Department should not take the decision of the school board as if it were its own, or consider itself bound by the decision of the school board not to give a grant if it thinks proper. I wish to reserve to the Education Department the entire decision. We fully admit that

if the Education Department, considering all the circumstances, determines that the school is unnecessary, it may, according to the Act, give its decision accordingly." *

The commissioners recognised the justice of his contention, and reported that—

"The remedy for the grievance complained of seems to be in a more liberal interpretation of the word 'suitability' of a school, and in a close adherence to the spirit of the provisions of the Act of 1870."

Since then, as notably in the case of Portsmouth in the present year, the Department has taken a wider view of its powers, and whilst continuing to consult the local school-board, has declined to be bound by the decision of that body when grounded on irrelevant or insufficient reasons.

Schools in receipt of the Government grants must be open to the inspection of the Education Department, to see that the conditions on which the grants are made are complied with. The management of the school is not, however, taken over by the State, but is in the hands of the school managers, who are responsible to the Department for the conduct of the school, its maintenance in efficiency, and the provision of the needful school requisites.

In Catholic schools, the managers usually consist of the priest, assisted by two members of the congregation. All communications with the Department must be carried on through the managers; the various grants are paid to them; they appoint and pay the teachers; make such regulations not inconsistent with the Code as they may think proper; have to find the necessary funds by which the Government grants and the school fees may require to be supplemented.†

II. RELIGION AND THE CONSCIENCE CLAUSE.

The following are the principal requirements of the Code directly affecting religion.

* Final Report of Royal Commission, p. 58.

† See Provost Wenham's excellent little book, *The School Manager, His Office and Duties in Regard to Denominational Schools.* London, St. Anselm's Society.

Lay persons alone are recognised as teachers in day schools (Code, 1892, Art. 32). The requirements as to religious instruction are in accordance with the Conscience Clause (sec. 7 of the Act of 1870).

"(1.) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance, or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs:

"(2.) The time or times during which any religious observance is practised, or instruction in religious subjects is given at any meeting of the school, shall be either at the beginning or at the end, or at the beginning and the end of such meeting, and shall be inserted in a time-table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every schoolroom; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school.

The following minute of April 2, 1878, relates to the above section:—

(*a*) Provided that at each meeting of a school instruction in secular subjects is continuously given for the prescribed time, by or under the supervision of the principal teacher, and that there is a class-room attached to the school, a time-table may be approved, which provides for religious instruction . . . being given in the class-room to separate classes or divisions of the school, either at the beginning or end of the meeting; and the time of secular instruction need not be the same for the whole school.

(*b*) If there is no class-room attached to the school, the time for secular instruction must be the same for the whole school.

Subsect. (2) above requires a time-table showing the times for religious instruction to be shown in a conspicuous place in every

school-room. This time-table must be approved and signed by the Inspector, who is not to express any opinion as to the time devoted to religious instruction, provided that the above provisions are not infringed. He is, however, to see that the time-table, "while conforming to sec. 7 (2), sets apart at each meeting of a school, for the instruction in secular subjects of each class or division of the school, at least the amount of time prescribed by the Code."*

The time fixed by Art. 12 of the Code of 1892 for secular instruction at each meeting of the school is two hours for older children and an hour and a half for infants. In the case of half-time scholars, one attendance is reckoned as an attendance and a half.

S. 76 of the Act of 1870 empowers the managers of voluntary schools to hold inspections of their own in religious or other subjects on any two days in the year.

Where the managers of any public elementary school not provided by a School Board, desire to have their school inspected, or the scholars therein examined, as well in respect of religion as in other subjects, by an inspector other than one of Her Majesty's inspectors, such managers may fix a day or days, not exceeding two in any one year, for such inspection or examination.

The managers shall, not less than fourteen days before any day so fixed, cause public notice to be given in the school, and notice in writing of such day to be conspicuously affixed in the school. On any such day religious observance may be practised, and any instruction in religious subjects given at any time during the meeting of the school, but any scholar who has been withdrawn by his parent from any religious observance or instruction in religious subjects, shall not be required to attend the school on any such day.

In a circular issued to Her Majesty's inspectors of schools on the 16th of January, 1878, the Education Department observe: "It should never be forgotten that a child withdrawn from the whole or part of the religious teaching or observances of a school should in no way be subjected to disparaging treatment on account of his parent having thought fit to avail himself of his statutory right in this matter. On the other hand, in

* Minutes of Feb. 7, 1881, and April 2, 1878.

your communications respecting the arrangements of the time-tables, you will remember that you have no right to interfere in any way with the liberty allowed by statute to managers of providing for religious teaching and observances at the beginning and end of the two daily school meetings. In your allusions to this subject and to the conscience clause, you will be most careful not to lead managers or teachers to suppose that the complete provision which has now been made by the Legislature for protecting the rights of conscience, as an essential part of a system of compulsory attendance, and the limitation of the necessary examination by Her Majesty's Inspectors to secular subjects, imply that the State is indifferent to the moral character of the schools, or in any way unfriendly to religious teaching."

III. GOVERNMENT GRANTS.

Government grants in aid of voluntary education may be divided into two classes, (1) Grants to public elementary schools, (2) Grants to training colleges for teachers.

Grants to Public Elementary Schools may again be sub-divided into (1) The Annual Grant, and (2) The optional Fee Grant in lieu of the children's school pence.

The Annual Grant.

The Code of 1892, provides for the following grants:—

I.—*Infant Schools.*

(1).—A Fixed Grant on the average attendance of 9*s.* or 7*s.*, according as the conditions of an Infant School are or are not fully satisfied.

(2).—A Variable Grant of 2*s.*, 4*s.*, or 6*s.*, according to the report of the Inspector as to the present character of the instruction and discipline.

(3).—A Grant of 1*s.* for satisfactory teaching of needle-work, or drawing in the case of boys.

(4).—A Grant of 1*s.* for singing if taught by note, or 6*d.* if by ear.

II.—*Day Schools for older scholars.*

(1).—A Principal Fixed Grant of 12*s.* 6*d.* on average attendance of scholars, but increased to 14*s.* for special intelligence and proficiency.

(2).—A Fixed Grant of 1*s.* for discipline and organisation, increased to 1*s.* 6*d.* on recommendation of Inspector.

(3).—A Grant of 1*s.* on average attendance of Girls, if taught needlework satisfactorily.

(4).—A Grant of 1*s.* for singing by note, or 6*d.* if by ear.

(5).—A Grant of 1*s.* or 2*s.* on Class Subjects (see Section 15), according to report of Inspector.

(6).—A Grant of 2*s.* or 3*s.* for each scholar presented in any specific subject (see Section 15).

III.—*Pupil teachers' grant.*

(1).—An additional Grant is now made in respect of the pupil teachers on the necessary minimum staff of the school who pass the required examinations.

The Grants are of £2 or £1 in respect of pupil teachers in their first or second year, and of £3 or £4 in respect of pupils in their third year and of £4 or £5 in respect of pupil teachers who obtain a Queen's scholarship, or, in other words, pass the examination qualifying them for admission to a training college.

A Grant of £15 is also made for assistant-teachers on the minimum staff, who after three years' service in the school pass the required examination. This grant is to cease after March 1, 1895.

These grants are made to voluntary schools and board schools alike, but on terms which press very differently on the two classes of schools. No school, whatever the amount earned by its proficiency, can receive a grant averaging more than 17*s.* 6*d.* per child, unless its total income from other sources exceeds that amount: and then the grant must not exceed such other income. Thus, if the total income of the school from other sources amount only to 16*s.*, the school, though earning 20*s.*, will only receive 17*s.* 6*d.*; while if the total

income from other sources amount to, say, 19*s.*, then, though the school earn 20*s.*, only 19*s.* will be paid.

This 17*s.* 6*d.* limit, as it is called, adds to the disparity already existing between voluntary schools depending on voluntary support, and board schools with their unlimited powers of supplementing their income from the rates. The limit at present in force was created by the Act of 1876 (39 & 40 Vict. c. 79, s. 19), which provides as follows:

"Such grant shall not in any year be reduced by reason of its excess above the income of the school if the grant do not exceed the amount of seventeen shillings and sixpence per child in average attendance at the school during that year, but shall not exceed that amount per child, except by the same sum by which the income of the school derived from voluntary contributions, rates, school fees, endowments, and any source whatever other than the parliamentary grant, exceeds the said amount per child."

The Fee Grant under the Act of 1891 (54 & 55 Vict. c. 56) counts (see below) as "income derived from voluntary contributions" as regards the above limit.

Sect. 1 provides as follows:—

"(3) For the purposes of section 19 of the Elementary Education Act, 1876, the fee grant, paid or payable to a school, shall be reckoned as school pence to be met by the grant payable by the Education Department.

The money received under the new pupil teachers' grant, is necessarily spent on the pupil teachers themselves, and is, therefore, not applicable to general school purposes. The effect of treating it as part of the grant subject to the 17*s.* 6*d.* limit, is, therefore, *pro tanto* to diminish the amount of the grant applicable to general school purposes. This has been felt as a decided hardship, and has formed the subject of a remonstrance addressed by the Catholic Poor School Committee to the Department.

It would be impossible within the limits of this Manual to go fully into the conditions imposed by the Education Department for earning the grant. They are yearly becoming more arduous, and are imposing a greater strain on the managers of voluntary schools who cannot, like the school boards, have recourse to the rates to raise the extra funds, without which it is impossible to earn the maximum grant.

Free Education—the Fee Grant.

We have next to deal with the Fee Grant of 10*s.* for every child over three and under fifteen in average attendance at a public elementary school. The Act of 1891 (54 & 55 Vict. c. 56, see Appendix P) was passed for the express purpose of establishing free education, and relieving poor parents from the burden of finding the school pence for the children. It is not, however, a compulsory measure, and managers may accept the Fee Grant or refuse it, as they like.

Further, as appears from a letter addressed by the Department to the late Cardinal Archbishop, managers who accept the Grant may afterwards forego it and resume their full powers of charging school fees.

Managers accepting the Fee Grant are not allowed to charge school fees except in certain cases specified in the Act.

> 2.—(1) In any school receiving the Fee Grant—
>
> (*a*) Where the average rate of fees received during the school year ended last before the first day of January, 1891, was not in excess of 10*s.* a year for each child of the number of children in average attendance at the school; or
>
> (*b*) For which an annual parliamentary grant has not fallen due before the said first day of January; no fee shall, except as by this Act provided, be charged for children over three and under fifteen years of age.
>
> (*c*) In any school receiving the Fee Grant where the said average rate was so in excess, the fees to be charged for children over three and under fifteen years of age shall not, except as by this Act provided, be such as to make the average rate of fees for all children exceed for any year the amount of the said excess.

But the average rate of such reduced fees for all children between the ages of three and fifteen is not to exceed the amount of the excess of the former average fee. So long as the average fee charged does not exceed the difference between the old fee and ten shillings a year, the discretion of the managers is not further fettered. Thus, it would appear, they may admit some

children free whilst charging others a proportionately higher fee, provided that the average rate charged to all scholars within the specified age does not exceed the amount of the difference between the fee previously in force and ten shillings a year.

(3). Where the average rate previously charged for fees, books and other purposes did not exceed 10*s.* a year, no charge of any kind for children is to be made by managers accepting the Fee Grant (s. 3).

Power is however given to the Department by sect. 4 to dispense with the above provisions in certain cases, and to allow managers to charge certain further fees without forfeiting the Fee Grant. The conditions for such dispensing are:—

(1). Sufficient school accommodation without payment of fees must have been provided for the district.

(2). The Department must be satisfied that the permission is required owing to a change of population in the district, or will be for the educational benefit of the district.

(3). The fee for each child must not exceed sixpence a week.

(4). Power is reserved to the Department of making it a condition of their permission to charge such fees, that they are to be taken wholly or partially in reduction of the fee grant.

Sections 6 and 7 of the Act authorise the managers of neighbouring voluntary schools to pay the fee grant received for each school into a common fund for distribution, as may be arranged by them, among the different schools.

Payment of School Fees for Poor Parents.

Wherever school fees are charged the guardians are still bound to pay a fee not exceeding threepence a week for the children of poor parents who are unable to pay the fees themselves. This payment gives the guardians no power to fix the school to which the child shall be sent—a matter wholly in the parent's discretion. The important section of the Act of 1876 (39 & 40 Vict. c. 79, s. 10), embodying this principle, is as follows:—

10. The parent, not being a pauper, of any child who is unable by reason of poverty to pay the ordinary fee for such child at a

public elementary school, or any part of such fee, may apply to the guardians having jurisdiction in the parish in which he resides; and it shall be the duty of such guardians, if satisfied of such inability, to pay the said fee, not exceeding threepence a week, or such part thereof as he is, in the opinion of the guardians, so unable to pay.

The parent shall not by reason of any payment made under this section be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification.

Payment under this section shall not be made on condition of the child attending any public elementary school other than such as may be selected by the parent, nor refused because the child attends, or does not attend any particular public elementary school.

The twenty-fifth section of the Elementary Education Act, 1870, is hereby repealed.

This section has not been repealed, but continues in full force wherever school fees continue to be paid.

Parliamentary Grants to Training Colleges.

Training Colleges for teachers are divided into Residential and Day Training Colleges. Day Colleges have not been adopted by Catholics. The conditions regarding them will be found in the Code. Admission to the Residential Colleges is obtained by passing what is known as the Queen's Scholarship examination. This is open to pupil-teachers who have spent, as a rule, four years in the work of teaching in schools, and to other candidates who must be over eighteen years of age.

The Grants to Residential Colleges which are regulated by Articles 122–127 of the Code, may be said to amount to £50 for every master, and £35 a year for every mistress in residence.

The grant is, however, conditional on the scholar's being recognised during two years as a certificated teacher after leaving the college and satisfying other prescribed tests.

The total grant made to a College for any year must not exceed 75 per cent. of its income for the year.

IV. ATTENDANCE.

It is here desirable to set out the chief statutory provisions as to compulsory attendance at school, the allowance of half-time &c.

Compulsory Attendance.

S. 4 of the Act of 1876 (39 & 40 Vict. c. 79) defines the duty of every parent to educate his children between the ages of five and fourteen :—

It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act.

Section 11 empowers a court of summary jurisdiction to make an order for the attendance at school of children, whose parents neglect to provide efficient elementary education for them, and of children who are found wandering, or not under proper control, or consorting with disorderly persons and reputed criminals.

(1.) If either the parent of any child above the age of five years who is under this Act prohibited from being taken into full time employment, habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child ; or

(2.) Any child is found habitually wandering or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals ;

it shall be the duty of the local authority, after due warning to the parent of such child, to complain to a court of summary jurisdiction, and such Court may, if satisfied of the truth of such complaint, order that the child do attend some certified efficient school willing to receive him and named in the order, being either such as the parent may select, or, if he do not select any, then such public elementary school as the Court think expedient, and the child shall attend that school every time that the school is open, or in such other regular manner as is specified in the order.

An order under this section is in this Act referred to as an attendance order.

Any of the following reasons shall be a reasonable excuse :

(1.) That there is not within two miles, measured according to the nearest road, from the residence of such child any public elementary school open which the child can attend ; or

(2.) That the absence of the child from school has been caused by sickness or any unavoidable cause.

Section 12 provides for enforcing such attendance orders by

imposing a fine of five shillings on the defaulting parent, and by sending the child, under certain circumstances, to a certified industrial school.

Where an attendance order is not complied with, without any reasonable excuse within the meaning of this Act, a court of summary jurisdiction, on complaint made by the local authority, may, if it think fit, order as follows:

(1.) In the first case of non-compliance, if the parent of the child does not appear, or appears and fails to satisfy the Court that he has used all reasonable efforts to enforce compliance with the order, the Court may impose a penalty not exceeding with the costs five shillings; but if the parent satisfies the Court that he has used all reasonable efforts as aforesaid, the Court may, without inflicting a penalty, order the child to be sent to a certified day industrial school, or if it appears to the Court that there is no such school suitable for the child, then to a certified industrial school; and

(2.) In the second or any subsequent case of non-compliance with the order, the Court may order the child to be sent to a certified day industrial school, or if it appears to the Court that there is no such school suitable for the child then to a certified industrial school, and may further in its discretion inflict any such penalty as aforesaid, or it may for each such non-compliance inflict any such penalty as aforesaid without ordering the child to be sent to an industrial school;

Provided that a complaint under this section with respect to a continuing non-compliance with any attendance order shall not be repeated by the local authority at any less interval than two weeks.

Bye-Laws as to Attendance, Employment, &c.

The last-mentioned section is still the only means of enforcing the attendance of children between 13 and 14 where necessary, but children between the age of 10 and 13 are now further subject to bye-laws made by the local school board, or school attendance committee, or in default by the Education Department, and subject in all cases to the approval of the Department.

Under 33 & 34 Vict. c. 75, s. 74 (the Act of 1870), 39 & 40 Vict. c. 79, ss. 21, 23, and 43 & 44 Vict. c. 23, ss. 2, 3, bye-laws are now in force in every district.

(1) Requiring parents of children of not less than five or more than thirteen to cause their children to attend school unless there be some reasonable cause.

(2) Determining the time during which such children are to attend school, provided that no such bye-laws shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the body to which his parent belongs.

The Education Department have issued a model form of bye-laws, and now refuse to sanction any which depart from it.

They provide:—

(1.) That no child shall be required to attend school after passing the fifth standard.
(2.) That no child shown to be beneficially and necessarily employed shall be required to attend more than 150 times in each year after passing some standard, usually the third, to be fixed by the bye-laws.
(3.) That a penalty not exceeding five shillings, including costs, may be imposed on parents for each offence.

Scholars between ten and thirteen making this diminished number of attendances are known as half-timers; the Code requires their names to be kept in a half-time register, but the managers are not to enter the name of any scholar in this register, unless he has obtained a labour certificate from the local authority of the district and is actually employed in conformity with it.

These bye-laws are based on the provisions of sects. 5, 6 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), which prohibit the employment of any child under ten, whilst regulating the employment of children over ten and under fourteen.

5. A person shall not, after the commencement of this Act, take into his employment (except as hereinafter in this Act mentioned) any child—
(1.) Who is under the age of ten years; or
(2.) Who, being of the age of ten years or upwards, has not obtained such certificate either of his proficiency in reading, writing, and elementary arithmetic, or of

previous due attendance at a certified efficient school, as is in this Act in that behalf mentioned, unless such child being of the age of ten years or upwards, is employed, and is attending school in accordance with the provisions of the Factory Acts, or of any bye-law of the local authority (hereinafter mentioned) made under section seventy-four of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1873, and this Act, and sanctioned by the Education Department.

6. Every person who takes a child into his employment in contravention of this Act shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

Section 5 still governs exclusively the case of children between the ages of thirteen and fourteen, but the Elementary Education Act of 1880 (43 & 44 Vict. c. 23, s. 4) has forbidden altogether the employment of children between ten and thirteen, except in accordance with the local bye-laws mentioned above. The section is as follows :—

4. Every person who takes into his employment a child of the age of ten, and under the age of thirteen years, resident in a school district before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act of 1876, and shall be liable to a penalty accordingly.

Provisions of the Factory and Workshop Act, 1878 (41 *Vict. c.* 16), *as to the Education of Children.*

Attendances at School of Children employed in a Factory or Workshop.

23. The parent of a child employed in a factory or in a workshop shall cause that child to attend some recognised efficient school (which school may be selected by such parent), as follows :

(1.) The child, when employed in a morning or afternoon set, shall in every week, during any part of which he is so employed, be caused to attend on each work day for at least one attendance ; and

(2.) The child, when employed on the alternate day system, shall on each work day preceding each day of employment in the factory or workshop be caused to attend for at least two attendances ;

(3.) An attendance for the purposes of this section shall be an attendance as defined for the time being by a Secretary of State with the consent of the Education Department, and be between the hours of eight in the morning and six in the evening:

Provided that—

(*a.*) A child shall not be required by this Act to attend school on Saturday or on any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed; and

(*b.*) The non-attendance of the child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, also when the school is closed during the ordinary holidays or for any other temporary cause; and

(*c.*) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector under this Act, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the Education Department every case of the approval of a school by him under this section.

A child who has not in any week attended school for all the attendances required by this section shall not be employed in the following week until he has attended school for the deficient number of attendances.

The Education Department shall from time to time, by the publication of lists or by notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

Obtaining of School Attendance Certificate by Occupier of Factory or Workshop.

24. The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which such child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by the child, a certificate (according to the prescribed form and directions) respecting the attendance of such child at school in accordance with this Act.

The employment of a child without obtaining such certificate as is required by this section shall be deemed to be employment of a child contrary to the provisions of this Act.

The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or his workshop, and shall produce the same to an inspector when required during that period.

Payment by Occupier on Application of Sum for Schooling of Child, and deduction of it from Wages.

25. The board authority or persons who manage a recognised efficient school attended by a child employed in a factory or workshop, or some person authorised by such board authority or person, may apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, the said weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.

Employment as Young Person of Child of thirteen on obtaining an Educational Certificate.

26. When a child of the age of thirteen years has obtained from a person authorised by the Education Department a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school, as hereinafter mentioned, that child shall be deemed to be a young person for the purposes of this Act.

The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by a Secretary of State, with the consent of the Education Department, and the standards so fixed shall be published in the *London Gazette*, and shall not have effect until the expiration of at least six months after such publication.

Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school.

Powers of Inspectors.

68. An inspector under this Act shall for the purpose of the

execution of this Act have power to do all or any of the following things; namely,

(5.) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and

(6.) To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined.

Fine for Employing Children, Young Persons, and Women contrary to the Act.

83. Where a child, young person, or woman is employed in a factory or workshop contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night, five pounds for each child, young person, or woman so employed; and where a child, young person, or woman is so employed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night, two pounds for each child, young person, or woman so employed.

A child, young person, or woman who is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act.

Fine on Parent for allowing Child or Young Person to be Employed contrary to the Act, or not causing Child to attend School.

84. The parent of a child or young person shall,—

(1.) If such child or young person is employed in a factory or workshop contrary to the provisions of this Act, be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the Court that such offence was committed without the consent, connivance, or wilful default of such parent; and

(2.) If he neglects to cause such child to attend school in accordance with this Act, be liable to a fine not exceeding twenty shillings for each offence.

Coal Mines Regulation Act, 1887 (50 & 51 *Vict. c.* 58).

The Coal Mines Regulation Act, 1887, also contains provisions respecting the employment and education of children.

By sects. 4, 7 boys and girls under twelve are not to be employed in connexion with any mine. Girls and women are in no case to be employed underground.

S. 10 provides for the payment of school fees out of wages, as follows:—

(1.) After a request in writing by the principal teacher of a public elementary school which is attended by any boy or girl employed in or in connexion with a mine, the person who pays the wages of the boy or girl shall as long as he employs the boy or girl pay to the principal teacher of that school, for every week that the boy or girl attends the school, the weekly sum specified in the application, not exceeding twopence per week, and not exceeding one-twelfth part of the wages of the boy or girl, and may deduct the sum so paid by him from the wages payable for the services of the boy or girl.

(2.) If any person after such application refuses to pay on demand any sum that becomes due as aforesaid, he shall be liable to a penalty not exceeding ten shillings.

V. INDUSTRIAL SCHOOLS.

It next appears advisable to deal briefly with Industrial Schools, the classes of children who may be sent to them, and the protection for their religion while there.

An Industrial School is defined by 29 & 30 Vict. c. 118 as "a school in which children are lodged, clothed and fed as well as taught."

Classes of Children to be detained in Certified Industrial Schools.

Any person may bring before two Justices or a Magistrate any child apparently under the age of fourteen years that comes within any of the following descriptions, namely,—

(1.) That is found begging or receiving alms (whether actually or under the pretext of selling or offering for sale any thing), or being in any street or public place for the purpose of so begging or receiving alms;

(2.) That is found wandering and not having any home or settled place or abode, or proper guardianship, or visible means of subsistence;

(3.) That is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment;

(4.) That frequents the company of reputed thieves. (Industrial Schools Act, 1866, s. 14.)

(5.) Lodging, living, or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution;

(6.) Frequenting the company of prostitutes. (Industrial Schools Amendment Act, 1880, 43 & 44 Vict. c. 15).

The Justices or Magistrate before whom a child is brought as coming within one of those descriptions, if satisfied on inquiry of that fact and that it is expedient to deal with him under this Act, may order him to be sent to a certified industrial school.

(7.) Where a child apparently under the age of twelve years is charged before two Justices or a Magistrate with an offence punishable by imprisonment or a less punishment, but has not been in England convicted of felony, or in Scotland of theft, and the child ought, in the opinion of the Justices or Magistrate (regard being had to his age and to the circumstances of the case), to be dealt with under this Act, the Justices or Magistrate may order him to be sent to a certified industrial school. (Industrial Schools Act, 1866, s. 15).

(8.) A child may also be sent to an industrial school under section twelve of the "Elementary Education Act of 1876" (see above), where an attendance order has not been complied with, and where the parent satisfies the Court that he has used all reasonable efforts to compel the child to attend school.

(9.) Refractory children on application of parents; and

(10.) Refractory workhouse children on the application of the guardians. (Industrial Schools Act, 1866, ss. 16, 17.)

The Act of 1866 contains the following sections regarding the religious rights of children detained in industrial schools:—

In determining on the school, the Justices or Magistrate shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a school conducted in accordance with such religious persuasion, and the order shall specify such religious persuasion.

20. If the parent, step-parent, or guardian, or if there be no parent, step-parent, or guardian, then the god-parent or nearest adult relative, of a child sent or about to be sent to a certified

industrial school which is not conducted in accordance with the religious persuasion to which the child belongs, states to the Justices or Magistrate by whom the order of detention has been or is about to be made (or to two Justices or a Magistrate having the like jurisdiction) that he objects to the child being sent to or detained in the school specified or about to be specified in the order, and names another certified industrial school in Great Britain which is conducted in accordance with the religious persuasion to which the child belongs, and signifies his desire that the child be sent thereto, then and in every such case the Justices or Magistrate shall, upon proof of such child's religious persuasion, comply with the request of the applicant, provided,—

First, that the application be made before the child has been sent to a certified industrial school, or within thirty days after his arrival at such a school:

Secondly, that the applicant show to the satisfaction of the Justices or Magistrate that the managers of the school named by him are willing to receive the child.

25. A minister of the religious persuasion specified in the order of detention as that to which the child appears to the Justices or Magistrate to belong may visit the child at the school on such days and at such times as are from time to time fixed by regulations made by the Secretary of State for the purpose of instructing him in religion.

The following sections of the Industrial Schools Act, 1866, among others, relate to the cost of maintenance of children in industrial schools:—

Expenses of Children in Industrial Schools.

Power to Treasury to Contribute towards Custody, &c., of Children Detained.

35. The Commissioners of Her Majesty's Treasury may from time to time contribute, out of money provided by Parliament for the purpose, such sums as the Secretary of State from time to time thinks fit to recommend towards the custody and maintenance of children detained in certified industrial schools; provided that such contributions shall not exceed two shillings per head per week for children detained on the application of their parents, step-parents, or guardians.

Power to Prison Authority to Contract for Reception of Children in Schools.

36. In England a prison authority may contract with the managers of a certified industrial school for the reception and

maintenance therein of such children as are from time to time ordered by Justices to be sent there from the district of the prison authority.

The following extract is taken from a paper by Col. Lenox Prendergast on the development of the Reformatory and Industrial School System in England :—

The following table shows the scale of payments made to the voluntary industrial schools for the various classes of children. Briefly, it may be stated that, as a general rule, the London School Board contribution supplements the Treasury contribution, so as to make a total grant to the school of 7*s.* per child per week, except in the cases of training ships, where the total grant is made up to a sum of 8*s.* per week per child :—

	Board Contributions.					Treasury Contributions.				
	Industrial Schools Act, 1866.			Elementary Education Act, 1876.		Industrial Schools Act, 1866.			Elementary Education Act, 1876.	
	S. XIV.	S. XV.	S. XVI.	S. XI.(1)	S. XI.(2)	S. XIV.	S. XV.	S. XVI.	S. XI.(1)	S. XI.(2)
	s. d.	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
Age 6 to 10	4 0	4 0	5 0	5 0	3 6	3 0	3 0	2 0	2 0	3 6
„ 10 „ 15	3 6†	3 6†	5 0	5 0	3 6	3 6*	3 6*	2 0	2 0	3 6
Over 15	3 6†	3 6†	5 0	5 0	3 6	3 6*	3 6*	2 0	2 0	3 6
„ „ having completed 4 years of detention . .	4 0	4 0	5 0	5 0	3 6	3 0	3 0	2 0	2 0	3 6

* In cases of schools certified before 1872, this amount is 5*s.*
† In cases of schools certified before 1872, this amount is 2*s.*

The school board, the guardians, and the sanitary authority may also under certain conditions contribute to the support of industrial schools.

The Reformatory and Industrial Schools Act, 1891 (54 & 55 Vict. c. 23), empowers the managers of reformatory and industrial schools to apprentice or dispose of the children in their custody as follows :—

If any youthful offender or child detained in or placed out on licence from a certified reformatory or industrial school conducts himself well, the managers of the school may, with his own con-

sent, apprentice him to, or dispose of him in, any trade, calling, or service, or by emigration, notwithstanding that his period of detention has not expired, and such apprenticing or disposition shall be as valid as if the managers were his parents.

Provided that where he is to be disposed of by emigration, and in any case unless he has been detained for twelve months, the consent of the Secretary of State shall also be required for the exercise of any power under this section.

Day Industrial Schools.

Under the Elementary Education Act, 1876, s. 16, new day industrial schools, in which industrial training, elementary education, and one or more meals a day, but not lodging are provided, have been provided in some districts.

The conditions on which they are carried on are fixed by Order in Council, and are with some necessary modifications the same as those regulating industrial schools.

The children admissible to day industrial schools are the same as those enumerated above, excluding (2), (3), (4) and (5).

Under s. 16 of the Act of 1876 children may also attend without order of Court on request of a local authority and of the parent, and on the undertaking of the parent to pay such sum not less than 1*s.* a week as may be fixed by the Secretary of State.

A parent or guardian may require the child to be sent to a day industrial school conducted in accordance with its religious persuasion, *if there be one within two miles of the residence of the child.*

The Order in Council of March 20, 1877, adapting the provisions of the Industrial Schools Act, 1866, to Day Industrial Schools, contains the following clauses relating to religion:—

23. A minister of the religious persuasion which, as the case may be, is specified by the order of detention or attendance order as that to which the child appears to the Court making the order to belong, or specified in the undertaking of the parent of a child attending the school without an order of Court as that to which the child belongs, may visit the child at the school on such days and at such times, as are from time to time fixed by regulations made by the Secretary of State, for the purposes of instructing him in religion.

It shall not be required as a condition of any child being admitted into or continuing in a certified day industrial school, whether under an order of detention, attendance order, or otherwise that he shall attend or abstain from attending any Sunday-school or any place of worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, to which his parent objects, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, and the parent may, on any such day, withdraw the child accordingly.

CHAPTER VII.

Trusts and Bequests.

It remains to deal in this chapter with the law specially affecting property devoted to Catholic purposes. We shall consider it under the following headings:—

I. General Principles.
II. "Superstitious Uses."
III. Religious Communities of Men.
IV. How Forbidden Uses may be Validated.
V. Mortmain Acts.
VI. The Taxation of Charities.
VII. The Charity Commission Acts.

I. GENERAL PRINCIPLES.

Catholics now stand on the same footing as Protestant Nonconformists with respect to property devoted to religious purposes, with two important exceptions. Trusts and bequests in favour of religious orders of men "bound by monastic or religious vows" are illegal and void, owing to the prohibition of these orders in the Emancipation Act; and trusts and bequests for the purpose of obtaining prayers and masses for the dead are also void, being regarded by the Courts as devoted to "superstitious uses." Both these disabilities will be considered later.

With regard to trusts and bequests for Catholic purposes which are recognised as lawful, the first point to be observed is, that they are subject to the rule against perpetuities, unless they come within the wide class of exceptions made in favour of purposes which are considered "charitable," in the legal

meaning given to that word. The rule against perpetuities, designed to prevent property from being permanently tied up, requires that every use or trust must be so limited as necessarily to vest within a life or lives in being, and a further period of twenty-one years. An exception has, however, always been made by the Court of Chancery in favour of trusts and uses which it considers it for the public benefit to perpetuate. Many of the purposes which the law so favours are enumerated in 43 Eliz. c. 4, and include the relief of the aged and poor, the maintenance of the sick, the establishment of free schools, the marriage of poor maids, the support of young apprentices, and the relief and redemption of prisoners and captives. The list given in this Act has never been held to be exhaustive, but has been taken by the Court as a guide in deciding what purposes should be considered charitable. The history of the special meaning thus attached to the word "charitable" is traced by Lord Macnaghten in the recent case of *The Commissioners of Income Tax* v. *Pemsel.**

That, according to the law of England, a technical meaning is attached to the word "charity," and to the word "charitable," in such expressions as "charitable uses," "charitable trusts," or "charitable purposes," cannot, I think, be denied. The Court of Chancery has always regarded with peculiar favour those trusts of a public nature, which, according to the doctrine of the Court, derived from the piety of early times, are considered to be charitable. Charitable uses or trusts form a distinct head of equity. Their distinctive position is made the more conspicuous by the circumstance that, owing to their nature, they are not obnoxious to the rule against perpetuities, while a gift in perpetuity not being a charity is void. Whatever may have been the foundation of the jurisdiction of the Court over this class of trusts, and whatever may have been the origin of the title by which these trusts are still known, no one, I think, who takes the trouble to investigate the question can doubt that the title was recognised, and the jurisdiction established before the Act of 43 Eliz., and quite independently of that Act. The object of that statute was merely to provide new machinery for the reformation of abuses in regard to charities. But by a singular construction it was held to authorise certain gifts to charity which otherwise would have been void. And it contained in the preamble a list of charities so varied and comprehensive, that it became the practice of the Court

* [1891] A. C. 580.

to refer to it as a sort of index or chart. At the same time it has never been forgotten that the "objects there enumerated," as Lord Chancellor Cranworth observes,* "are not to be taken as the only objects of charity, but are given as instances."

And in an older case, *Morice* v. *Bishop of Durham*,† the legal meaning of the word "charity" was defined by Sir William Grant as follows:—

"That word in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this Court. Here its signification is derived chiefly from the statute of Elizabeth. Those purposes are considered charitable, which the statute enumerates, or which by analogies are deemed within its spirit and intendment, and to some such purpose every bequest to charity generally shall be applied."

The creation of charitable trusts, as we shall see presently, is subject to the important provisions of the so-called Mortmain Acts.

Trusts for the support of religion are not mentioned in the Act of Elizabeth, and were not at first regarded as within its scope. Indeed, Sir Francis Moore,‡ commenting on the statute in the reign of James I., tells us that such trusts had been purposely omitted—"lest," he says, "the gift intended to be employed upon purposes grounded upon charity might in times of change (contrary to the minds of the givers) be confiscated into the King's treasury. For *religion being variable, according to the pleasure of succeeding princes*, that which at one time is held for orthodox may at another be accounted superstitious, and then such lands are confiscated, as appears by the Statute of Chantries" (1 Edw. 6, c. 14). This is the statute of Edward VI., to which reference will be made in dealing with so-called superstitious uses.

Sir Francis Moore's opinion did not, however, prevail, and trusts for the promotion of the established and then only legal religion were supported as within the equity of the statute, while trusts for the promotion of the Catholic religion § or Nonconformity were treated as illegal, and the money went to the

* 1 D. & J. 79. † 9 Ves. 405. ‡ Cited in Tyssen, p. 119.
§ *Cary* v. *Abbot*, 7 Ves. 409; *A.-G.* v. *Power* (Ir.) 1 Ball & Beatty, 145; *A.-G.* v. *Todd*, 1 Keen, 803.

Crown to be applied to some legal charity.* Thus the intention of a Catholic testator was not only defeated, but his money was often applied for the support of the Established Church. The effect of the Toleration Act of 1688 was to free all Protestant Dissenters, except Unitarians, from this disability, and thenceforth trusts for the promotion of their religious views were enforced by the Court. The lawfulness of Catholic charities was not established until after the Emancipation Act of 1829. By the Relief Act of 1791 the Catholic religion ceased to be unlawful, and, as in the case of Dissenters under the Toleration Act, Catholic charities would thereupon have become valid, but for an express proviso in the 17th section of the Act, that whatever uses, trusts, and dispositions of real or personal property were theretofore deemed superstitious or unlawful, should continue to be so deemed, notwithstanding that Act. The Emancipation Act of 1829 gave a very full measure of relief to Catholics taking the Roman Catholic oath, but did not expressly refer to Catholic charities. To remove all doubts regarding these, the Roman Catholic Charities Act, 1832 (2 & 3 Will. 4, c. 115), was passed entitled more fully, "An Act for the better securing the charitable donations and bequests of His Majesty's subjects in Great Britain professing the Roman Catholic Religion." We give the statute in Appendix Q.

It enacts that:

"His Majesty's subjects professing the Roman Catholic religion, in respect of their schools, places of religious worship,† education and charitable purposes in Great Britain, and the property held therewith, and the persons employed in or about the same, shall in respect thereof be subject to the same laws as the Protestant Dissenters are subject to in England in respect to their schools and places for religious worship, education, and charitable purposes, and not further or otherwise."

Since the passing of this Act, which was held to be retrospective,‡ except as to pending litigation, trusts for Catholic

* *Gates and Jones's Case*, 2 Vern. 266; *Cary* v. *Abbot*, and *A.-G.* v. *Todd*, *ubi sup.*

† 18 & 19 Vict. c. 86, s. 2, interprets this section, so far as it relates to places of religious worship, by providing that they shall be governed by the law affecting Dissenting places of worship for the time being.

‡ *Bradshaw* v. *Tasker*, 2 My. & K. 221.

purposes have, subject to the two important exceptions already mentioned, been held good, but within the rule as to perpetuities unless in the nature of a charity.* Thus an immediate gift to nuns of a contemplative order would be held good; but a trust to apply the annual income of invested funds for their benefit for ever would be void, as infringing the rule against perpetuities, the support of a purely contemplative order not being regarded as a charitable purpose. On the other hand, a similar trust for the benefit of Sisters of Charity or Sisters of Mercy would be held charitable and escape from the operation of the rule,† on account of the works of charity to which these orders devote themselves. Generally it may be said that pious uses are not necessarily charitable. Bequests for the support of Catholic missions or schools, or the promotion of the Catholic religion generally, are clearly charitable. In *A.-G.* v. *Gladstone*,‡ a bequest of £15,000 to be applied for the use of Roman Catholic priests in and near London was held to create a perpetual charitable trust. On the other hand, in an Irish case,§ where £100 was left to be invested and the income applied in having masses said in a public church for the benefit of the third order of St. Francis, it was held that the gift was bad as being a perpetual dedication of the income to a purpose not charitable.

The law as to trusts for Catholic purposes which are neither charitable, nor void as being for "superstitious uses," or for the support of forbidden orders, is the same as that which applies to other bequests for purposes which are lawful but not charitable,‖ and has recently been summed up by North, J., as follows:—

"There is not the least doubt that a man may, if he pleases, give a legacy to trustees upon trust to apply it in erecting a monument to himself in a church, or in a churchyard, or even in unconsecrated ground, and I am not aware that such a trust is in any way invalid,

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* *West* v. *Shuttleworth*, 2 My. & K. 684.
† *Cocks* v. *Manners*, L. R. 12 Eq. 574.
‡ 13 Simon, 7.
§ *Kehoe* v. *Wilson*, L. R. Ir. 7 Ch. 10.
‖ Bequests for the repair of tombs *inside a church* have been held charitable as being for the benefit of the congregation (*Hoare* v. *Osborne*, 1 L. R. Eq. 585).

although it would be difficult to say who would be the *cestuis que trust* of the monument. In the same way I know of nothing to prevent a gift of a sum of money to trustees on trust to apply it for the repair of such a monument. In my opinion such a trust would be good, although the testator must be careful to limit the time for which it is to last, for, not being a charitable trust, unless it is to come to an end within the limits fixed by the rule against perpetuities, it would be illegal. But a trust to lay out a certain sum in building a monument and the gift of another sum in trust to apply the same for keeping that monument in repair, say for ten years, is in my opinion a perfectly good trust, though I do not see who could ask the Court to enforce it."*

II. "SUPERSTITIOUS USES."

The next point for consideration is what the law means by "superstitious uses," and how it came to prohibit them. That bequests for prayers and masses for the benefit of the testator himself or other deceased persons were valid and enforced before the Reformation admits of no doubt whatever. The first statutory restriction put upon them is to be found in a statute of Henry VIII.,† passed in 1531, which forbade trusts of hereditaments to the use of parish churches, chapels, &c., for the purpose of having "obits," or annual funeral services, performed during any longer period than twenty years. This Act did not forbid the devise of land for the purpose of obtaining masses during any shorter period.

Much greater importance attaches to the Statute of Chantries (1 Edw. 6, c. 14) passed in 1547 in the first year of Edward VI.

The preamble recites that:

"a great part of superstition and errors in Christian religion had been brought into the minds and estimations of men by reason of the ignorance of their very true and perfect salvation through the death of Jesus Christ, and by devising and fantasying vain opinions of Purgatory and Masses satisfactory to be done for them which be departed; the which doctrine and vain opinion by nothing more is maintained and upholden than by the abuse of trentals, chantries and other provisions, made for the continuance of the said blindness and ignorance."

* *In re Dean. Cooper-Dean* v. *Stevens*, 41 Ch. D. 552 (see p. 556).
† 23 Hen. 8, c. 10. Rep. 51 & 52 Vict. c. 42.

After further reciting that property devoted to such purposes ought to be devoted to founding schools and other good purposes, and that the king ought to be entrusted with the execution of this design, the Act goes on to vest in the king all free chapels, chantries, lands given for finding a priest, and lands and charges on lands devoted to the maintenance of any anniversary or obit. The Act, it is to be noted, dealt only with the past, and did not apply to trusts subsequently to be created.

The courts, however, have treated the above preamble as declaratory of the law that such trusts and uses were superstitious, and have, therefore, held them to be void.*

Prior to the Roman Catholic Charities Act of 1832, there are several dicta in the books, that trusts for obtaining prayers for the dead were superstitious and void, but such trusts being in general the creation of Catholic testators, came under the general head of illegality attaching to all Catholic purposes. Such illegality was, however, removed by the Act of 1832, and the question as to "superstitious uses" was shortly afterwards distinctly raised in the case of *West* v. *Shuttleworth*, 1835.† There the testatrix left several legacies to priests, and desired that they should be paid at once, "that I may have the benefit of their prayers and masses." She also gave other legacies to priests, "for the benefit of their prayers for the repose of my soul and that of my deceased husband."

In delivering judgment Pepys, M.R. (afterwards Lord Chancellor Cottenham), said:—

"The gifts to priests and chapels are not affected by the 2 & 3 Will. 4, c. 115, which applies only to schools, places for religious

* An Act of Elizabeth passed in 1559 (1 Eliz. c. 24), may also be referred to, though it appears to be retrospective, and has not affected the decisions relating to superstitious uses. It gives to the Queen (s. 7) all past gifts made since the death of Edward VI., for priests to say, or sing mass, or find any obit, light, or lamps, &c.; and provides (s. 8) that when property is given on condition that the donee should pay any sum to any priest to say, or sing mass, or to pray for the souls of the dead, the Queen and her heirs should take the amount devoted to such purposes, and the donee enjoy the residue of the property. These words, though general, have been interpreted as a qualification of the preceding section, and, therefore, as applying only to past gifts (Tyssen, pp. 54–55). See also the retrospective Act of 1 Geo. I., s. 2, c. 50, cited above, p. 30.

† 2 My. & K. 684.

worship, education, and charitable purposes. . . . There can be no doubt that the sums given to the priests and chapels were not intended for the benefit of the priests personally, or for the support of the chapels for general purposes, but that they were given . . . for the benefit of their prayers for the repose of the testatrix's soul and that of her deceased husband, and the question is whether such legacies can be supported. It is truly observed by Sir W. Grant in *Cary* v. *Abbot* (7 Ves. 490), that there was no statute making superstitious uses void generally, and that the statute of Edward VI. related only to superstitious uses of a particular description then existing; and it is to be observed that that statute does not declare any such gift to be unlawful, but avoids certain superstitious gifts previously created. The legacies in question, therefore, are not within the terms of the statute of Edw. 6, but that statute has been considered as establishing the illegality of certain gifts, and amongst others, the giving legacies to priests to pray for the soul of the donor has, in many cases collected in Duke (p. 466), been decided to be within the superstitious uses intended to be suppressed by that statute. I am, therefore, of opinion that these legacies to priests and chapels are void."

The same view was taken by Kindersley, V.-C., in the subsequent case of *Heath* v. *Chapman* (1854):—*

"It is quite clear that, at all events, before 2 & 3 Will. 4 (c. 115), it was commonly assumed to be the law, and the assumption was acted on, that a gift to a priest for masses, for the repose of the testator's soul, or a gift to say masses generally was superstitious and void. The way in which this came to be the law is this: at the time of the passing of the statute of Edw. 6, such gifts were void. That statute declares, as to certain uses, not that they are void—it assumes that—but that the property given to such uses is to belong to the Crown; and the Courts of Law have subsequently put this interpretation on that statute, not that it actually declares such trusts to be void, but that it stamps on all such trusts, whether created before or subsequently to the statute, the character of illegality, on the ground of being superstitious; it gives to the Crown certain property devoted to such uses, but it stamps all such uses as superstitious and void. . . .

"What did the statute of Will. IV. do? If it had meant to alter the law with respect to superstitious uses, certainly it uses the most singularly inapt words that could well be imagined for the purpose. But in truth there is no such indication of intention in the Act at all. What it intended was this. As to their places of worship, as to their places of education, and as to the employment of persons officiating in their ceremonial, it is intended to put Roman Catholics on the same footing as Protestant Dissenters. But it does not refer at all to the purposes to which property is

* 2 Drew, 417. See p. 423.

devoted, which, if superstitious, still render the gift void. No doubt, if property is given for the use of a place of worship, that is good; but the statute leaves quite untouched the case where property is given for superstitious uses."

The statement that the Act of Edward VI. assumes the uses therein mentioned to be superstitious is open to observation. Such uses were certainly valid prior to the Reformation, and were recognised as such in the statute of Henry VIII. in 1531 (23 Henry VIII. c. 10).

The only ground for such invalidity that can be suggested is that it was the policy of the law to enforce uniformity of religion according to the doctrines of the Reformation, and to repress all doctrines opposed to it. This was the ground on which all Catholic uses were held bad for nearly three hundred years; but the law having withdrawn its prohibition of the Catholic religion and made its doctrine and practice legal, it is not easy to see why this exception should continue to be made. Prayers for the dead, it has been held by an ecclesiastical court, are not contrary to the doctrine of the Established Church, as is apparently assumed in the above judgments.*

In *Michel's Trust*,† a Jewish case, Lord Romilly expressed a well-founded doubt as to the principle on which the Courts had acted:—

"There are many cases of superstitious uses unconnected with prayers for the soul; but in regard to *West* v. *Shuttleworth* and *Heath* v. *Chapman* I have always felt this difficulty:

"So far as relates to their places for religious worship and the property held therewith, Roman Catholics and Jews are now placed in the same position as Protestant Dissenters; and, if it be part of the forms of their religion, that prayers should be said for the benefit of the souls of deceased persons, it would be difficult to say that, as a religious ceremony practised by a Dissenting class of religionists, it could be deemed superstitious in the legal sense in which these words were used prior to the passing of the statutes in question, which practically have authorised them. In the time of Edward VI. and Elizabeth, the ceremony of mass was considered superstitious, and I do not know that the law made any distinction between masses generally and masses for souls, or any distinction between those said for the general purpose and object of their

* *Breeks* v. *Woolfrey*, 1 Curt. Eccl. Rep. 880; cited above, p. 61 (n).
† 28 Beav. 39. See p. 42.

religion in the worship of God and those which are for more limited objects which were formerly considered superstitious, and which the Court now, considering them in a Protestant point of view, still regards as superstitious. I express no opinion on this point, as no such case arises here."

In *Blundell's Trusts*,* the same judge reiterated his opinion of these cases, though feeling bound by their authority :—

"I expressed a difficulty in the case referred to (*Michel's Trust*), as to whether gifts for religious ceremonies practised by a Dissenting class of religionists might not be permitted if not opposed to public morality, but I think the decided cases too strong, and that the House of Lords alone can alter the settled law. It is clear that I must act on *West* v. *Shuttleworth*,† which I cannot overrule."‡

In *Re Elliot*,§ the testator, who died domiciled in England, left a legacy to a Jesuit College in Victoria, to be spent in masses for the souls of himself and his wife. The gift was good according to the law of Victoria. North, J., held that the English law applied altogether, and that the gift was void.

The Irish Courts, it should be observed, have not followed the English Courts on this point, and even before the Emancipation Act we find a bequest for masses supported.‖ The Act of Edward VI. did not apply to Ireland, and even before the Emancipation Act a larger measure of recognition had been extended to the Catholic religion in Ireland, the Irish Parliament having by 35 Geo. 3, c. 21, founded a college for the education of priests. The Irish Courts have also held a bequest for masses to be a "pious use" within section 16 of the Charitable Donations and Bequests, Ireland, Act, 1844 (7 & 8 Vict. c. 97).¶ On the other hand, such bequests have been held not to be charitable, and so subject to the rule against

* 30 Beav. 360.

† *Ibid.* 2 My. & K. 684.

‡ The decisions in *West* v. *Shuttleworth* and the other cases are ably criticised in Mitcheson's Charity Commission Acts, p. 46.

§ 1891, W. N. 9.

‖ *Commissioners of Charitable Donations and Bequests* v. *Walsh* (1823), 7 Ir. Eq. 34, n.; see also *Felan* v. *Russell*, 4 Ir. Eq. 701; *Read* v. *Hodgens*, 7 Ir. Eq. 17; *Brennan* v. *Brennan*, Ir. R. 2 Eq. 321; *Dillon* v. *Reilly*, Ir. R. 10 Eq. 152.

¶ *Boyle* v. *Boyle*, Ir. R. 11 Eq. 433.

perpetuities,* and also liable to legacy duty, from which in Ireland bequests purely charitable are exempt.†

The question of these so-called "superstitious uses" has never yet come before the highest Court; but, unsound in principle as the accepted doctrine appears to be, it has been so long acted upon as to render its reversal improbable.

III. RELIGIOUS COMMUNITIES OF MEN.

Trusts and bequests for the benefit of religious communities of men "bound by monastic or religious vows" (and, therefore, not including Oratorians and other similar congregations) are also illegal, such communities being rendered unlawful by the provisions of the Emancipation Act referred to in the chapter on Catholic disabilities.‡ As already observed, no attempt has ever been made by the Crown to enforce these provisions, but their presence on the statute book has the serious effect of placing such orders under a grave disability. Individual members of a forbidden order may of course hold property and have money left to them in the same way as any other members of the community; but the Court will not enforce trusts or bequests for the collective benefit of the order. It appears, however, that a bequest to an order upon trust to apply the fund for charitable purposes would not fail on account of the disability attaching to the trustee.

In *Carbery* v. *Cox*,§ a bequest of £20 a year to the monks of S—— to provide clothes for the poor children attending their school was held a good charitable trust, during the lives of the monks at S—— at the time of the testator's death and the survivors, the fund afterwards to be applied *cy-près*, *i.e.*, under a scheme to be settled subsequently; but a bequest of £20 a year after the death of M. C. to the monks of Mount Melleray for their chapel was held bad on the ground that the Abbot died

* *Morrow* v. *McConville*, [1883] L.R. Ir. xi. 236, and *Dorrian* v. *Gilmore*, L. R. Ir. xv. 69; but *Wilkinson's Trusts*, 19 L. R. Ir. 531, and *Bradshaw* v. *Jackman*, 21 L. R. Ir. 15.

† *A.-G.* v. *Delaney*, Ir. R. 10 C. L. 104; *Perry* v. *Tuomey*, 21 L. R. Ir. 480.

‡ Above, p. 47.

§ 3 Ir. Ch. 231.

before M. C., and that the Court could not recognise his successor or discover any general charitable purpose.

In *Hogan* v. *Byrne*, 1862,* a devise of lands and bequest of money to the Christian Brothers "to pay their rent," was held to be a bequest to the order and not to the individual monks, and therefore bad.

In *Sims* v. *Quinlan*,† a bequest for the education of two priests of the Order of St. Dominic was held bad, and a further bequest of £500 to the Rev. P. Conway of St. M.'s Priory, Cork, Roman Catholic clergyman, was also held bad, as Father Conway admitted that he was bound by a secret trust to apply the money in redeeming the rent of the Dominican church at Cork.

On this it may be observed that a secret trust, such as the law takes cognizance of, is created by a communication made by the testator *in his life*, to the devisee or legatee, and assented to, tacitly or otherwise, by the latter. Such a trust if legal is enforced; if illegal as (*e.g.*) at variance with the law of Mortmain or as to "superstitious uses," vitiates the devise or bequest.

In *Kehoe* v. *Wilson*, 1880,‡ three bequests to the superiors of the time being of three religious orders in Dublin, to be applied in two cases towards building new churches, and in the third, towards the maintenance and repair of the existing church, were held bad, as intended for the benefit of the orders. "If," said the judge, "the legacies had not been given, these monks would have had to provide the money for the chapels out of their own funds. The principal objects are the monks of those orders, though the public are meant to worship in these chapels." This reasoning does not appear conclusive—at least, in the cases of orders in charge of missions. There the congregation are quite as much interested as the monks in the provision of a suitable church, and quite as likely to have to find the money. They are therefore as much beneficiaries as the monks; and in such a case it would seem that the bequest might be supported as a lawful charitable trust for the benefit of the congregation in the

* 13 Ir. C. L. R. 166.
† 17 Ir. Ch. 43.
‡ L. R. Ir. 7 Ch. 10.

same way as the legacy to the monks of S—— to provide clothes for their school-children was supported in the above-mentioned case of *Carbery* v. *Cox.*

In *Bradshaw* v. *Jackman,** a bequest to J., Provincial of the Franciscan Order, for masses was held good by the Irish Courts as not being necessarily for the benefit of the order.

In *Liston* v. *Kegan,* 1882,† a bequest to a priest, which was proved to be bound by a secret trust for a church of the Vincentian Order, was held bad.

In two recent cases of bequests to convents the Irish judges, following the English case of *Cocks* v. *Manners,* have shown a tendency to uphold such bequests by construing them as bequests to the individual members of the community.

In *Wilkinson's Trusts,*‡ a bequest to the Superioress for the time being at the date of the testator's death for the purposes of the convent, was upheld as a trust for the individual nuns in the convent at the time of the testator's death, and so outside the rule against perpetuities.

In *Bradshaw* v. *Jackman,*§ a legacy to the Superioress of a convent, in trust for the community of the convent, was held a trust in favour of the individual members of the community, and therefore good.

Roman Catholic Trusts Act, 1860.

The hardships of the law avoiding trusts and bequests for masses, &c., and for religious orders of men has been somewhat mitigated by an Act of 1860 (23 & 24 Vict. c. 134), which we give in Appendix R. It provides as follows:—

Sect. 1. No existing or future gift or disposition of real or personal estate upon any lawful charitable trust for the exclusive benefit of persons professing the Roman Catholic religion shall be invalidated by reason only that the same estate has been or shall be also subjected to any trust or provision deemed to be superstitious or otherwise prohibited by the laws affecting persons

* 21 L. R. Ir. 15.
† L. R. Ir. IX. 531.
‡ 19 L. R. Ir. 531.
§ 21 L. R. Ir. 15.

professing the same religion, but in every such case it shall be lawful for the High Court of Chancery or any judge thereof sitting at chambers in exercise of the jurisdiction created by the Charitable Trusts Act, 1853, upon the application of H. M. Attorney-General, or of any person authorised for this purpose by the certificate of the Board of Charity Commissioners for England and Wales, or for the said Board upon the application of the person or persons acting in the administration of such real or personal estate or of a majority of such persons, to apportion the same estate or the annual income or benefit thereof, so that a proportion thereof to be fixed by such Court or judge or by the said Board, as the case may require, may be exclusively subject to the lawful charitable trust declared by the donor or settlor, and that the residue thereof may become liable to such lawful charitable trusts for the benefit of persons professing the Roman Catholic religion to take effect in lieu of such superstitious or prohibited trusts as the said Court or judge or the said Board may consider under the circumstances to be most just, and also that it shall be lawful for the Court or judge or Board making any such apportionment by the same or any other order or orders to establish any scheme for giving effect thereto, and to appoint trustees for the administration of the several portions of such real and personal estate according to the trusts established of the same proportions respectively, and to vest the estate to be so apportioned in the trustees so to be appointed.

The Act does not apply where a bequest is entirely devoted to an unlawful purpose, but only where some of the purposes are lawful and some unlawful. In such a case the bequest is to be apportioned, and part assigned for the lawful purposes mentioned in the will, the remaining part being devoted to some lawful Catholic charity.

IV. HOW FORBIDDEN USES MAY BE VALIDATED.

Though bequests for superstitious uses or forbidden orders will never be enforced by the Courts, yet testators may give practical if not legal effect to their wishes, by adopting the following method, which we take from a high authority:—*

The author believes that the following scheme is often adopted of making gifts, which might be void as being gifts for superstitious uses or as offending against the Statute of Mortmain, for the purposes of the religion of one of the principal denominations in this

* Elphinstone, Introduction to Conveyancing, p. 407.

country. The testator devises or bequeaths the property to two or three of the clergy of that denomination, selecting respectable people whom he does not know personally, and he carefully abstains from communicating his intentions to them; he leaves with his will a letter addressed to them stating what he wishes to have done with the gift, and also a letter addressed to their ecclesiastical superior informing him of the circumstance. So that it is impossible on the one hand for them to suppress the testator's wishes and retain the gift for their own use without their conduct becoming known to the superior, and on the other hand for anyone to establish that a trust is created which might be invalid as offending against the law.

It is obvious that the device of giving a legacy imposing a moral but not a legal obligation on the legatee to apply it in some particular manner, may be used for various purposes. A provision can be made in this manner for an improvident child, or land can be applied for charitable purposes. In all of these cases it appears advisable not to state the real intention of the testator in the will but to leave with the will a letter (not attested) addressed to the legatee stating the wishes of the testator. The greatest care must be taken not to inform the legatee during the testator's lifetime of his real intentions, as, if the legatee be informed, a trust will be created contrary to the intentions of the parties.

The above passage may be taken as an accurate statement of the result of decided cases. Where property is left by will on a secret trust, the Courts will compel the trustee to disclose on oath the purposes of the trust, and if they are illegal, will regard the trustee as taking a trust for the legal representative of the testator. But if the property is left absolutely, and the testator has not during his lifetime communicated his wishes to the legatee or devisee, or authorised others to do so, in such cases the Court will allow the devisee or legatee to take the property free from all legal restrictions, and will not inquire to what use he puts it.*

It is not, perhaps, necessary that the will should in all cases be silent on the subject. Thus a bequest to a priest for the support of public worship in his, or any stated church, may be accompanied by a request to him, expressly stated to be intended not to constitute a trust, or legal obligation, that he will say masses for the soul of (*e.g.*) the testator.†

* *Lomax* v. *Ripley*, 3 Sm. & Giff. 48; see further cases collected in Tyssen, p. 401.

† *Rowbotham* v. *Dunnett*, 8 Ch. D. 430.

V. THE MORTMAIN ACTS.

We have next to refer to the statutory restrictions placed on the alienation for charitable purposes of land or money to be laid out in the purchase of land. These restrictions were the creation of what is known as the Georgian Mortmain Act (9 Geo. 2, c. 36), and have been modified by the Mortmain Acts of 1888 (51 & 52 Vict c. 42), and 1891 (54 & 55 Vict. c. 73), in a way which diminishes their importance though it is still necessary to refer to them. Various statutes had been passed before the Reformation, chiefly with a view of checking the accumulation of land in the hands of religious orders, and so not subject to alienation. Such lands were said to be *in mortua manu* or in mortmain. These statutes,* which forbade corporations, aggregate or sole, to acquire land without a special licence from the Crown, are repealed by the Act of 1888, but substantially re-enacted in section 1 of the Act as follows:—

Forfeiture on Unlawful Assurance or Acquisition in Mortmain.

1.—(1). Land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from Her Majesty the Queen, or of a statute for the time being in force, and if any land is so assured otherwise than as aforesaid the land shall be forfeited to Her Majesty from the date of the assurance, and Her Majesty may enter on and hold the land accordingly.

As Catholic charities are not legal corporations, the law affecting corporations need not detain us further.

The Act of George II., commonly called the Georgian Mortmain Act, provided that no land, or interests in land, or money to be laid out in land, should be given for charitable purposes except in the manner fixed by the Act. The principal requirements of that Act as construed by the Courts are well expressed in section 4 of the consolidating Act of 1888, which now regulates the subject.†

(1.) Subject to the savings and exceptions contained in this Act

* 7 Edw. 1, Statut' de Viris Religiosis; 13 Edw. 1, c. 32; 18 Edw. 3 st. 3, c. 3; 15 Rich. 2, c. 5; 23 Hen. 8, c. 10.

† 9 Geo. 2, c. 36, s. 5, is still in force as regards the colleges of Eton, Winchester and Westminster.

every assurance of land to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses shall be made in accordance with the requirements of this Act, and unless so made shall be void.

(2.) The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

(3.) The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision for the benefit of the assuror or of any person claiming under him.

(4.) Provided that the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assuror as to the assuror himself; namely,

(i.) The grant or reservation of a peppercorn or other nominal rent.
(ii.) The grant or reservation of mines or minerals;
(iii.) The grant or reservation of any easement;
(iv.) Covenants or provisions as to the erection, repair, position, or descriptions of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
(v.) A right of entry on non-payment of any such rent or on breach of any such covenant or provision;
(vi.) Any stipulations of the like nature for the benefit of the assuror or of any person claiming under him.

(5.) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rent-charge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for non-payment thereof.

(6.) If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

(7.) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death.

(8.) If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the

transfer of stock at least six months before the death of the assuror, including in those six months the days of the transfer and of the death.

(9.) If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after the execution thereof, be enrolled in the Central Office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land.

The above section regulates the manner in which land or money to be laid out in land, may be given for charitable uses. It does not authorise a devise by will, and down to the passing of the Mortmain Act, 1891, all such devises were bad, this indeed being the express purpose of the legislature. "The mischief," said Lord Justice James in *Attree* v. *Hawe*,* "the sole mischief which the legislature set itself to prevent was the increase of inalienable land through the weakness of, or practices upon, dying persons, or through posthumous charity." Such bequests failed absolutely, and the charitable intention of the testator was absolutely defeated. This has now been altered by the Act of 1891, but, as gifts and devises of land or money to be laid out upon land, made during the life of the donor or grantor, are still regulated by the above section, it may be convenient to recapitulate its effect.

(1.) The assurance of land, or of personal estate to be laid out in the purchase of land, for the benefit of the charity must take effect at once in possession, and must contain no power of revocation or reservation for the benefit of the assuror with the exception of those mentioned, the most important of which is, that where the transaction is a sale, part of the price may be reserved by way of rent-charge on the property.

(2.) An assurance of land, not being copyhold, and of money to be laid out in the purchase of land, not being stock in the public funds, must be by deed executed in the presence of two witnesses.

An assurance of land, or of personal estate to be laid out in land, not being stock in the public funds, must be *made at least*

* 9 Ch. D. 337.

twelve months before the death of the assuror, unless there be full and valuable consideration, and must be enrolled at the Central Office of the Supreme Court within six months after execution, unless the charitable uses are declared by a separate instrument, in which case the separate instrument is to be enrolled.

(3.) An assurance of stock in the public funds to be laid out in the purchase of land for charitable uses must, unless made for full and valuable consideration, be made by transfer in the public books kept for the purpose *at least six* months before the death of the assuror.

Assurances, otherwise than by will, of land not exceeding two acres for the benefit of a religious or educational society, are exempted from the above formalities by sect. 7, sub-sect. 2, which is as follows :—

> (ii.) An assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes or for the promotion of education . . . . of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration.

The word land in the above Act is now * to include "tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land." The probable effect of this definition † is that leaseholds are now the only item of personal property subject to the restrictions of the Mortmain Acts, and that otherwise the old distinction between pure and impure personalty has been abolished.

Charitable Bequests by Will.

The important changes made by the Mortmain and Charitable Uses Act, 1891, already referred to (which we give in Appendix R) have now to be considered. Before the passing of this Act testators, while free to bequeath their pure personalty on lawful charitable uses, were absolutely restrained

* 54 & 55 Vict. c. 73, s. 3, repealing definition in the Act of 1888.
† See Tyssen's New Law of Charitable Bequests, 1891, at p. 9.

from so dealing with land, or personal property savouring of land, and known as impure personalty, such as leaseholds, mortgages, &c., and such bequests were illegal and void.

But now the Act provides that in case of all persons dying after the passing of the Act—

"Land may be assured by will to or for the benefit of any charitable use, but, except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator."

The time is capable of extension by the Court or the Charity Commissioners.

If not sold within the prescribed time it is to be sold by the Charity Commissioners (s. 6).

Personal estate directed to be laid out in land for the benefit of any charitable uses is not to be so laid out, but to be dealt with as if there was no such direction (s. 7).

But the Court or the Commissioners may authorise the charity to keep or acquire under the bequest any land required for actual occupation for the purposes of the charity.*

While the Mortmain and Charitable Uses Act, 1891, will at least prevent the testator's intention from failing for want of compliance with the Mortmain Acts, at the same time such bequests continue fettered with troublesome and uncertain conditions, and charitable landowners will be well advised as heretofore to convey the land to trustees during lifetime, or to direct their charitable legacies to be paid out of their personal estate other than leaseholds.†

VI. THE TAXATION OF CHARITIES.

The taxation or exemption from taxation of charities depends upon various statutes to which we proceed to refer.

Legacy and Succession Duty.

Gifts for charitable purposes are now liable to legacy and succession duty at the rate of 11½ per cent.‡ The liability to

* See the Act in the Appendix.
† See Tyssen's New Law of Charitable Bequests, p. 24.
‡ 51 Vict. c. 8, s. 21, sub-s. (2).

the tax is still regulated by 16 & 17 Vict. c. 51, s. 16, which provides as follows :—

Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition, which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of ten pounds per centum upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the Charity property, at interest, with power for him to give effectual discharges for the money so raised.

Substituted Duty on Corporate and Unincorporate Bodies.

A substituted duty of five per cent. per annum on the net annual income was imposed by 48 & 49 Vict. c. 51, s. 11, on property vested in corporate and unincorporate bodies, which escapes liability to probate, legacy, and succession duty. The preamble and enacting section are as follows :—

Whereas certain property, by reason of the same belonging to or being vested in bodies corporate or unincorporate, escapes liability to probate, legacy, or succession duties, and it is expedient to impose a duty thereon by way of compensation to the revenue: Be it therefore enacted, that there shall be levied and paid to Her Majesty in respect of all real and personal property which shall have belonged to or been vested in any body corporate or unincorporate during the yearly period ending on the fifth day of April one thousand eight hundred and eighty-five, or during any subsequent yearly period ending on the same day in any year, a duty at the rate of five pounds per centum upon the annual value, income, or profits of such property accrued to such body corporate or unincorporate in the same yearly period, after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges, and expenses properly incurred in the management of such property.

Subject to exemption from such duty in favour of property of the description following (that is to say)—

(3) Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts.

(6.) Property acquired by or with funds voluntarily contributed to any body corporate or unincorporate within a period of thirty years immediately preceding.

Section 15 makes the following provisions as to the returns and accounts to be made by bodies chargeable with such duty :—

(1.) Every body corporate or unincorporate, chargeable with the duty hereby imposed shall, on or before the first day of December in the year one thousand eight hundred and eighty-five, and on or before the first day of October in every subsequent year, deliver, or cause to be delivered, to the Commissioners or their officers, a full and true account of all property in respect whereof any such duty shall be payable, and of the gross annual value, income, or profits thereof accrued to the same body in the year ended on the preceding fifth day of April, and of all deductions claimed in respect thereof, whether by relation to any of the before-mentioned exemptions from such duty or as necessary outgoings.

(2.) The account shall be made in such form and shall contain all such particulars as the Commissioners shall, by any general or special notice require, or as shall be necessary or proper for enabling them fully and correctly to ascertain the duty due, and every accountable officer herein-before made answerable for payment of duty in respect of any property chargeable under this Act, shall be answerable also for the delivery to the Commissioners of such full and true account as aforesaid of and relating to such property.

The property of the Institution of Civil Engineers has been held exempt from the duty, as being applied for the promotion of science.*

In arguing unsuccessfully against the exemption the Attorney-General remarked that "the words for the promotion of science" in sub-s. 3, are much narrower than the words "for any purpose connected with a religious persuasion," and the Courts would no doubt give a wide extension to the latter phrase. Neither these words, "any purpose connected with a religious persuasion," nor the words "legally appropriated" have yet been made the subject of legal interpretation, and it would be hazardous to prophesy the exact meaning the judges would put upon them.

It does not, however, appear probable that any property held for Catholic purposes can be made liable to the duty imposed

* *Commissioners of Inland Revenue* v. *Forrest*, 15 App. Cas. 334.

by this Act. Every case must depend on its own circumstances, but such property would probably be found either not to be within the purview of the Act at all as not being "legally appropriated" within the meaning of the Act, or else to be within one of the exemptions which it confers.

Income Tax.

Charities, it may now be said broadly, are exempt from income tax. The exemption is conferred by the following sections of the Property Tax Act, 1842 (5 & 6 Vict. c. 35).

Section 61 relates to exemptions under Schedule A.

Allowances for Colleges and Halls in Universities.

"For the duties charged on any college or hall in any of the universities of Great Britain, in respect of the public buildings and offices belonging to such college or hall, and not occupied by any individual member thereof, or by any person paying rent for the same, and for the repairs of the public buildings and offices of such college or hall, and the gardens, walks, and grounds for recreation repaired and maintained by the funds of such college or hall:

Hospitals, Public Schools, Almshouses.

"Or on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging to such hospital, public school, or almshouse, and not occupied by any individual officer or the master thereof, whose whole income, however arising, estimated according to the rules and directions of this Act, shall amount to or exceed £150 per annum, or by any person paying rent for the same, and for the repairs of such hospital, public school, or almshouse, and offices belonging thereto, and of the gardens, walks, and grounds for the sustenance or recreation of the hospitallers, scholars, and almsmen, repaired and maintained by the funds of such hospital, school, or almshouse, or on any building the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded, by lectures or otherwise; provided also, that the said building be not occupied by any officer of such institution, nor by any person paying rent for the same:

"The said allowances to be granted by the Commissioners for general purposes in their respective districts:

Rents of Lands belonging to Hospitals, etc., or Vested in Trustees for Charitable Purposes.

"Or on the rents and profits of lands, tenements, and hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes:

"The said last-mentioned allowances to be granted on proof before the Commissioners for special purposes of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only:

"The said last-mentioned allowances to be claimed and proved by any steward, agent, or factor acting for such school, hospital, or almshouse, or other trust for charitable purposes, or by any trustee of the same, by affidavit to be taken before any Commissioner for executing this Act in the district where such person shall reside, stating the amount of the duties chargeable, and the application thereof, and to be carried into effect by the Commissioners for special purposes, and according to the powers vested in such Commissioners, without vacating, altering, or impeaching the assessments on or in respect of such properties; which assessments shall be in force and levied notwithstanding such allowances."

There is the following exemption under Schedule C, s. 88:—

Stock of Charitable Institutions Exempted.

"The stock or dividends of any corporation, fraternity, or society of persons, or of any trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, shall be applicable by the said corporation, fraternity, or society, or by any trustee, to charitable purposes only, and in so far as the same shall be applied to charitable purposes only; or the stock or dividends in the names of any trustees applicable solely to the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and in so far as the same shall be applied to such purposes; provided the application thereof to such purposes shall be duly proved before the said Commissioners for special purposes by any agent or factor on the behalf of any such corporation, fraternity, or society, or by any of the members or trustees."

Section 105 deals with exemptions under Schedule D.

"That any corporation, fraternity, or society of persons, and any trustee, for charitable purposes only, shall be entitled to the

same exemption in respect of any yearly interest, or other annual payment, chargeable under Schedule (D) of this Act, in so far as the same shall be applied to charitable purposes only, as is hereinbefore granted to such corporation, fraternity, society, and trustee respectively, in respect of any stock or dividends chargeable under Schedule (C) of this Act, and applied to the like purposes; "

The Courts have expressed unwillingness to give a precise definition of the term "public school" in the above Act. In *Blake* v. *Mayor of London*,* Denman, J., whose words are quoted with approval by Fry, L.J., in the Court of Appeal, said:—

"I think it is clear that the Legislature did not intend the exemption to be in favour only of schools wholly supported by charity. The enactment seems to have been drawn with a mixed intention, namely to exempt charitable institutions, and to exempt certain institutions partly depending on charity, perhaps in view of the beneficial character of the objects of those institutions."

Lastly, it may be said, that charities are liable to be rated for the relief of the poor;† they are also, with some few exceptions, liable to the land tax.

As regards the inhabited house duty, hospitals, charity schools, and houses for the reception or relief of the poor are exempted.‡

VII. THE CHARITY COMMISSION ACTS.

Charitable funds must be administered in accordance with the provisions of the trust deeds under which they are settled.

In the absence of written documents, the trusts of Catholic charities may be ascertained by usage under section 5 of the Roman Catholic Charities Act, 1860 (23 & 24 Vict. c. 134, s. 5).

"Where, any real or personal property, subject to any use, trust, gift, foundation or disposition for any charity relating to or connected with the Roman Catholic religion, shall have been applied upon any charitable trusts relating to, or connected with

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* 19 Q. B. D. 79.

† *Mersey Dock* v. *Cameron*, 11 H. L. C. 443.

‡ 48 Geo. 3, c. 55, Sched. B; Exemptions, Case IV.; 14 & 15 Vict. c. 36, cited in Tudor, 368.

the same religion during any continuous period of twenty years, but the original trusts of such property shall not be ascertained by means of any written document, the consistent usage of the last period of twenty years, or of the last period of twenty years during which any consistent usage shall have prevailed, shall be deemed to afford conclusive evidence of the trusts on which the property shall have been settled."

Catholic charities, with exceptions to be noticed below, are now subject to the supervision of the Board of Charity Commissioners, their exemption from the Charitable Trusts Acts of 1853 and 1855 having expired on September 1, 1859.* We proceed to refer briefly to the chief powers of control and assistance conferred by statute on the Board. These powers are very extensive, and include a general jurisdiction over charities similar to that exercised by the Court of Chancery, and a power to veto all applications to the courts in the matter of charities, unless instituted by the Attorney-General acting *ex officio*, or by persons claiming adversely to the charity.

Before referring in detail to these powers it may be well to quote the following extract from the 29th Report of the Commissioners on their general position with regard to the trustees of charities subject to their jurisdiction:—†

"The exercise, whether by the Court or the Commissioners of (their) jurisdiction (as regards charities) has been from time to time resented by trustees of charities as antagonistic to their interests, and as restrictive of the powers entrusted to them.

"This view of the relations between the State and the trustees seems to be due to a failure to recognise either the purely remedial and protective character of this jurisdiction or the true position of the trustees, who have been concisely described, on the high authority of Lord Lyndhurst (Hansard Parl. Deb. vol. lxxxv. p. 155) as 'public officers invested with public powers and public duties.'

"The central regulating authority, whatever it be, is specially charged, as the protector of charities, with the maintenance of that permanent character which is their distinctive feature. It is only where trustees, being more immediately and fitly concerned with the present administration of a charity, may be disposed to over-

* Catholic charities were exempted for two years by 16 & 17 Vict. c. 37, s. 62, and the exemption was prolonged from year to year by subsequent statutes, expiring at the date mentioned in the text.

† App. p. 21.

look its more remote and permanent interests, or where they deviate from the terms of their trust, that any real antagonism exists between the two authorities.

"The central authority, in the discharge of the duty which is unquestionably imposed upon it, must decide how far the interests which it has to guard are served by the course of administration pursued by the trustees, and in so doing can recognise no interests other than, or at variance with, those of the foundation itself.

"The principle thus stated underlies all the relations between the Charity Commissioners and trustees of charities, and it is that which governs the distinction which may be drawn between the functions of the two bodies.

"The trustees are the sole and responsible administrators of the income of the charity within the limits prescribed by the founder. They have no power, however, to deal with the capital, nor, as has recently been laid down with much emphasis by the Court of Appeal in the case of the Campden Charities at Kensington (*Re Campden Charities*, 18 Ch. D. 310), to vary in the slightest degree the prescribed mode of application of income.

"The Charity Commissioners, on the other hand, are in no sense administrators of income. The constitution and maintenance of an efficient body of administrating trustees is as necessary to the discharge of their functions as it is to the due execution of the founder's intention. But they are constituted the judges of all dealings with capital, as well as all variations of the prescribed mode of giving effect to the objects of the charity."

Sects. 9–14 of the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), empowers the Board to hold inquiries into the condition and management of charities, to require accounts and statements, and to examine witnesses on oath. Persons giving false evidence are to be guilty of a misdemeanour, and persons refusing to render accounts, or to attend and answer questions, or refusing to produce documents, are to be guilty of a contempt of Court. These provisions are not, however, to apply to persons claiming adversely to the charity.

The powers of the Board to call for accounts and examine witnesses are now regulated by ss. 6–9 of the Charitable Trusts Act, 1855 (18 & 19 Vict. c. 124).

VI. The Board . . . may require written accounts and statements and answers to inquiries relating to any charity, or the property or income thereof, to be rendered or made to them respectively by all or any of the following persons; that is to say,

Trustees or persons acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any monies thereof:
Agents of any trustees or persons:
Depositaries of any funds or monies of the charity:
Persons in the beneficial receipt of any funds thereof, or of any income or stipend therefrom:
Persons having the possession or control of any documents concerning the charity or any property thereof:
And the Board or the commissioner or inspector may require the persons rendering or making any such account, statement, or answer to verify the same by oath or otherwise, and may administer such oath: Provided always, that nothing herein contained shall extend to give to the said Board or their inspectors any power of requiring from any person holding or claiming to hold any property whatsoever adversely to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever, in relation to the property so held or claimed adversely, or any charitable trust or charge alleged to affect the same.

Power to require Trustees and Others to attend and be examined.

VII. The Board, or any commissioner or inspector acting as aforesaid, may require all or any such trustees and persons as aforesaid to attend before them respectively at such times and places as may be reasonably appointed, for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to them, and to produce upon such examination any documents in their custody or power relating to the charity or the property thereof, and may examine upon oath or otherwise all such persons and all persons voluntarily attending, and may administer such oath: Provided always, that no person shall be obliged to travel in obedience to any such requisition more than ten miles from his place of abode.

Persons not complying with Requisitions, &c., to be deemed guilty of a Contempt of the Court of Chancery.

IX. Any person refusing or wilfully neglecting to comply with any such requisition, or with any order of the Board, made under the provisions of this Act or the principal Act, or destroying or withholding any document required to be produced or transmitted by him, shall be taken to be guilty of a contempt of the High Court of Chancery, and shall be liable to be attached and committed by such Court, on summary application by the Commissioners to the same Court, or to any judge thereof, and shall pay such costs attending such contempt as the said Court, or judge

shall direct: Provided always, that the Court may at any time discharge, on such terms as it may deem just, any person attached or committed on any such application, or on any application made under section fourteen of the principal Act.

Trustees of charitable funds, within the Charitable Trusts Acts, are bound to furnish annual accounts to the Commissioners under 18 & 19 Vict. c. 124, s. 44.

Provision as to the annual Returns of Accounts by Trustees of Charities.

The trustees or administrators of every charity shall, on or before the twenty-fifth day of March one thousand eight hundred and fifty-six, prepare and make out and transmit to the Board an account of the endowments then belonging to the charity, showing in the case of realty not in hand the manner in which the same is let or occupied, and in the case of personalty the existing investment or employment thereof, and in what names such investments are made; and such trustees or administrators shall also on or before the twenty-fifth day of March next after the acquisition of any endowment not included in the foregoing account prepare and make out, in like manner, and transmit to the Board, a similar account of such last-mentioned endowment, and in case of any alienation, or charge, or transfer of any real or personal estate of the charity, shall on or before the twenty-fifth day of March then next following transmit to the Board an account of such alienation, charge, or transfer, and such trustees or administrators shall also, on or before the twenty-fifth day of March in every year, or such other day as may be fixed for that purpose by the Board, or as may have been already fixed for rendering the accounts thereof required by the principal Act, prepare and make out the following accounts in relation thereto; (that is to say),

(1.) An account of the gross income arising from the endowment, or which ought to have arisen therefrom, during the year ending on the thirty-first day of December then last, or on such other day as may have been appointed for this purpose by the Board:

(2.) An account of all balances in hand at the commencement of the year, and of all monies received during the same year, on account of the charity:

(3.) An account for the same period of all payments:

(4.) An account of all monies owing to or from the charity, so far as conveniently may be:

which accounts shall be certified under the hand of one or more of the said trustees or administrators, and shall be audited by the auditor of the charity, if any; and the said trustees or administrators shall, within fourteen days after the day appointed for

making out such accounts, deliver or transmit a copy thereof to the Commissioners at their office in London, and in the case of parochial charities shall deliver another copy thereof to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next general meeting of the vestry of such parishes, and insert a copy thereof in the minutes of the vestry book; and every such copy shall be open to the inspection of all persons at all seasonable hours, subject to such regulations as to the said Board may seem fit; and any person may require a copy of every such account or of any part thereof, on paying therefor after the rate of twopence for every seventy-two words or figures.

Section 17 of the Act of 1853 (16 & 17 Vict. c. 137), requires that notice of legal proceedings as to any charity instituted by any person except the Attorney-General should be given to the Board, and proceeds to enact that—

"No suit, petition, or other proceeding for obtaining any such relief, order, or direction, as last aforesaid (i.e., concerning any charity), shall be entertained or proceeded with by the Court of Chancery, or by any Court or judge, except upon and in conformity with an order or certificate of the said Board."

Proceedings by persons claiming adversely and by the Attorney-General acting *ex officio* are excepted from this provision.

Section 29 of the Act of 1855 (18 & 19 Vict. c. 124), put restrictions on the sale, mortgage or lease of charity estates to the trustees.

Restrictions of Charges and Leases of Charity Estates.

XXIX. It shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than with the express authority of Parliament, under any Act already passed or which may hereafter be passed, or of a Court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Board, any sale, mortgage, or charge of the charity estate, or any lease thereof in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years.

The judicial powers of the Board were conferred on them by the Act of 1860 (23 & 24 Vict. c. 136, s. 2).

This important section is as follows :—

The Board of Charity Commissioners for England and Wales, subject to the restrictions and rights of appeal herein-after provided, shall have power from time to time, upon the application of any person or persons who, under the forty-third section of "The Charitable Trusts Act, 1853," might be authorized to apply to any judge or Court for the like purposes,* to make such effectual orders as may now be made by any judge of the Court of Chancery sitting at chambers, or by any county court or district court of bankruptcy, for the appointment or removal of trustees of any charity, or for the removal of any schoolmaster or mistress or other officer thereof, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging thereto, or entitling the official trustees of charitable funds, or any other trustees, to call for a transfer of and to transfer any stock belonging to such estate, or for the establishment of any scheme for the administration of any such charity.

These powers, however, are not to be exercised in the case of charities with an income exceeding £50, except on the application of the trustees (s. 4), and the Board are not to exercise this jurisdiction in any case which "by reason of its contentious character, or of any special questions of law or fact, which it may involve, or for other reasons, they may consider more fit to be adjudicated on by any of the Judicial Courts."

The above section leaves the old jurisdiction of the Court untouched, but as such applications to the Court can only be made after the certificate of the Board has been obtained, and as the proceedings before the Board are much more convenient and inexpensive, nearly all such applications are now in practice made to the Board.

The most important of these powers is that of sanctioning variations in the prescribed mode of giving effect to the objects of the charity. This jurisdiction enables the Board to provide new schemes, where the original objects of the charity have failed absolutely, or where lapse of time or change of circumstances have rendered it inexpedient to adhere closely to the original objects. In the exercise of this discretion, the

* "All or any one of the trustees or persons administering or claiming to administer, or interested in any charity which shall be the subject of such application, or any two or more inhabitants of any parish or place within which the charity is administered or applicable."

founder's intentions must be regarded as far as is possible and practicable.

Other provisions of the Charitable Trusts Acts may be briefly referred to. Section 16 of the Act of 1853 authorises the Board to receive applications for advice in the management of charities, and indemnifies persons acting on such advice; s. 23 enables the Board to authorise building leases, working of mines, &c., in the charity property; s. 23 authorises the Board to sanction a compromise of claims on behalf of the charity, and the sale or exchange of charity lands.

By various provisions of the Charitable Trusts Act, official trustees of charitable funds have been constituted to whom stocks, shares, securities, and monies may be paid over. "Such trustees have no power to interfere in the administration of the income, or in the management of any charity, and their duty is confined to remitting periodically the dividends and income of the fund standing in their name, free from income tax, by drafts on the Bank of England, through a banker or otherwise, to or according to the order of the administering trustees of the charity in trust for which the funds are held for the purpose of being applied by them to the objects of the trust." *

Such a transfer secures the preservation of the trust funds intact, and the indemnity of the trustees, besides saving the charity the expense of periodical transfers of stock on the appointment of new trustees. Accordingly charitable trustees have largely taken advantage of their provisions.

It is to be observed that by s. 62 of the Act of 1853 every "building registered as a place of meeting for religious worship with the Registrar-General of births, deaths, and marriages in England and Wales, and *bonâ fide* used as a place of meeting for religious worship," is exempted from the Charitable Trusts Acts. This exemption, however, is partially removed by s. 15 of the Act of 1869 (32 & 33 Vict. c. 110), which gives the Board jurisdiction over places of worship so far as relates to the appointment and removal of trustees, the vesting of real or personal estate, and the establishment of schemes.

* Charity Commission Forms, No. 17.

Section 62 of the Act of 1853 also contains an exemption in favour of charities supported by voluntary contributions.

Provisions as to Charities supported partly by voluntary Subscriptions.

"Where any charity is maintained partly by voluntary subscriptions and partly by income arising from any endowment, the powers and provisions of the Act shall, with respect to such charity, extend and apply to the income from endowment only, to the exclusion of voluntary subscriptions, and the application thereof; and no donation or bequest unto or in trust for any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions, shall be subject to the jurisdiction or control of the said Board, or the powers or provisions of this Act; and no portion of any such donation or bequest as last aforesaid, or of any voluntary subscription, which is now or shall or may from time to time be set apart or appropriated and invested by the governing or managing body of the charity, for the purpose of being held and applied or expended for or to some defined and specific object or purpose connected with such charity, in pursuance of any rule or resolution made or adopted by the governing or managing body of such charity, or of any donation or bequest in aid of any fund so set apart or appropriated for any such object or purpose as aforesaid, shall be subject to the jurisdiction or control of the said Board or the powers or provisions of this Act."

By a recent Act (54 & 55 Vict. c. 17) the Board is empowered itself to institute proceedings on behalf of any charity for the recovery of property the gross annual income of which does not exceed £20, and which appears to the Board to belong to the charity.

The principal powers possessed by the Charity Commissioners have now been enumerated. More detailed information must be sought in the standard works on the subject.*

* See Mitcheson's 'Charity Commission Acts,' and Tudor's 'Charitable Trusts.'

APPENDICES.

APPENDIX A.*

Catholic Relief Act (10 Geo. 4. c. 7.)†

Whereas by various Acts of Parliament certain restraints and disabilities are imposed on the Roman Catholic subjects of his Majesty, to which other subjects of his Majesty are not liable: and whereas it is expedient that such restraints and disabilities shall be from henceforth discontinued: and whereas by various Acts certain oaths and certain declarations, commonly called the declaration against transubstantiation, and the declaration against transubstantiation and the invocation of saints and the sacrifice of the mass, as practised in the Church of Rome, are or may be required to be taken, made, and subscribed, by the subjects of his Majesty, as qualifications for sitting and voting in Parliament, and for the enjoyment of certain offices, franchises, and civil rights: *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 commencement of this Act all such parts of the said Acts as require the said declarations, or either of them, to be made or subscribed by any of his Majesty's subjects, as a qualification for sitting and voting in Parliament, or for the exercise or enjoyment of any office, franchise, or civil right, be and the same are (save as hereinafter provided and excepted) hereby repealed.*

II. And be it enacted, that from and after the commencement of this Act it shall be lawful for any person professing the Roman Catholic religion, being a peer, or who shall after the commencement of this Act be returned as a member of the House of Commons, to sit and vote in either House of Parliament respectively, being in all other respects duly qualified to sit and vote therein,

* See above, p. 33.

† The parts printed in *italics* are now repealed. The repealing Act, unless where otherwise stated, is 34 & 35 Vict. c. 48.

upon taking and subscribing the following oath, instead of the oaths of allegiance, supremacy, and abjuration:

"I, A. B., *do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty King George the Fourth, and will defend him to the utmost of my power against all conspiracies and attempts whatever, which shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them: and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the Crown, which succession, by an Act, intituled An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the Crown of this realm: and I do further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated, or deprived by the Pope, or any other authority of the See of Rome, may be deposed or murdered by their subjects, or by any person whatsoever: and I do declare, that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. I do swear, that I will defend to the utmost of my power the settlement of property within this realm, as established by the laws: and I do hereby disclaim, disavow, and solemnly abjure, any intention to subvert the present church establishment as settled by law within this realm: and I do solemnly swear, that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the Protestant religion or Protestant government in the United Kingdom: and I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever. So help me, God."*

III. And be it further enacted, that wherever in the oath hereby appointed and set forth, the name of his present Majesty is expressed or referred to, the name of the sovereign of this kingdom for the time being, by virtue of the Act for the further limitation of the Crown and better securing the rights and liberties of the subject, shall be substituted from time to time, with proper words of reference thereto.

IV. Provided always, and be it further enacted, that no peer professing the Roman Catholic religion, and no person professing the Roman Catholic religion, who shall be returned a member of the House of Commons after the commencement of this Act, shall be capable of sitting or voting in either House of Parliament respectively, unless he shall first take and subscribe the oath herein-before appointed and set forth, before the same persons, at the same times and places, and in the same manner as the oaths and the declaration now required by law are

respectively directed to be taken, made, and subscribed; and that any such person professing the Roman Catholic religion, who shall sit or vote in either House of Parliament, without having first taken and subscribed, in the manner aforesaid, the oath in this Act appointed and set forth, shall be subject to the same penalties, forfeitures, and disabilities, and the offence of so sitting or voting shall be followed and attended by and with the same consequences, as are by law enacted and provided in the case of persons sitting or voting in either House of Parliament respectively, without the taking, making, and subscribing the oaths, and the declaration now required by law.

V. And be it further enacted, that it shall be lawful for persons professing the Roman Catholic religion to vote at elections of members to serve in Parliament for England and for Ireland, and also to vote at the elections of representative peers of Scotland and of Ireland, and to be elected such representative peers, being in all other respects duly qualified, *upon taking and subscribing the oath herein-before appointed and set forth, instead of the oaths of allegiance, supremacy, and abjuration, and instead of the declaration now by law required, and instead also of such other oath or oaths as are now by law required to be taken by any of his Majesty's subjects professing the Roman Catholic religion, and upon taking also such other oath or oaths as may now be lawfully tendered to any persons offering to vote at such elections.*

VI. And be it further enacted, that the oath herein-before appointed and set forth shall be administered to his Majesty's subjects professing the Roman Catholic religion, for the purpose of enabling them to vote in any of the cases aforesaid, in the same manner, at the same time, and by the same officers or other persons as the oaths for which it is hereby substituted are or may be now by law administered; and that in all cases in which a certificate of the taking, making, or subscribing, of any of the oaths or of the declaration now required by law is directed to be given, a like certificate of the taking or subscribing of the oath hereby appointed and set forth shall be given by the same officer or other person, and in the same manner as the certificate now required by law is directed to be given, and shall be of the like force and effect.

VII. And be it further enacted, that in all cases where the persons now authorised by law to administer the oaths of allegiance, supremacy, and abjuration to persons voting at elections, are themselves required to take an oath previous to their administering such oaths, they shall, in addition to the oath now by them taken, take an oath for the duly administering the oath hereby appointed and set forth, and for the duly granting certificates of the same.

VIII. And whereas in an Act of the Parliament of Scotland made in the eighth and ninth session of the first Parliament of King William the Third, intituled "An Act for the preventing the Growth of Popery," a certain declaration or formula is therein contained, which it is expedient should no longer be required to be taken and subscribed: be it therefore enacted, that such parts of any Acts as authorise the said declaration or formula to be

tendered, or require the same to be taken, sworn, and subscribed, shall be and the same are hereby repealed, except as to such offices, places, and rights as are herein-after excepted; and that from and after the commencement of this Act it shall be lawful for persons professing the Roman Catholic religion to elect and be elected members to serve in Parliament for Scotland, and to be enrolled as freeholders in any shire or stewartry of Scotland, and to be chosen commissioners or delegates for choosing burgesses to serve in Parliament for any districts or burghs in Scotland, being in all other respects duly qualified, *such persons always taking and subscribing the oath herein-before appointed and set forth, instead of the oaths of allegiance and abjuration as now required by law, at such time as the said last-mentioned oaths, or either of them, are now required by law to be taken.*

IX. And be it further enacted, that no person in holy orders in the Church of Rome shall be capable of being elected to serve in Parliament as a member of the House of Commons; and if any such person shall be elected to serve in Parliament as aforesaid, such election shall be void; and if any person, being elected to serve in Parliament as a member of the House of Commons shall, after his election, take or receive holy orders in the Church of Rome, the seat of such person shall immediately become void; and if any such person shall, in any of the cases aforesaid, presume to sit or vote as a member of the House of Commons, he shall be subject to the same penalties, forfeitures, and disabilities as are enacted by an Act passed in the forty-first year of the reign of King George the Third, intituled "An Act to remove Doubts respecting the Eligibility of Persons in Holy Orders to sit in the House of Commons;" and proof of the celebration of any religious service by such person, according to the rights of the Church of Rome, shall be deemed and taken to be *primâ facie* evidence of the fact of such person being in holy orders, within the intent and meaning of this act.

X. And be it enacted, that it shall be lawful for any of his Majesty's subjects professing the Roman Catholic religion to hold, exercise, and enjoy, all civil and military offices and places of trust or profit under his Majesty, his heirs or successors; and to exercise any other franchise or civil right, except as herein-after excepted, *upon taking and subscribing, at the times and in the manner herein-after mentioned, the oath herein-before appointed and set forth, instead of the oaths of allegiance, supremacy, and abjuration, and instead of such other oath or oaths as are or may be now by law required to be taken for the purpose aforesaid by any of his Majesty's subjects professing the Roman Catholic religion.*

XI. Provided always, and be it enacted, that nothing herein contained shall be construed to exempt any person professing the Roman Catholic religion from the necessity of taking any oath or oaths, or making any declaration, not herein-before mentioned, which are or may be by law required to be taken or subscribed by

any person on his admission into any such office or place of trust or profit as aforesaid.

XII. Provided also, and be it further enacted, that nothing herein contained shall extend or be construed to extend to enable any person or persons professing the Roman Catholic religion to hold or exercise the office of guardians and justices of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style, or title such office may be constituted; nor to enable any person, otherwise than as he is now by law enabled, to hold or enjoy the office of Lord High Chancellor, Lord Keeper or Lord Commissioner of the Great Seal of Great Britian *or Ireland*,* or the office of Lord-Lieutenant, or Lord Deputy, or other chief governor or governors of Ireland; or his Majesty's High Commissioner to the General Assembly of the Church of Scotland.

XIII. Provided also, and be it further enacted, that nothing herein contained shall be construed to affect or alter any of the provisions of an Act passed in the seventh year of his present Majesty's reign, intituled "An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Cesses, and the Election of Churchwardens, and the Maintenance of Parish Clerks, in Ireland." †

XIV. And be it enacted, that it shall be lawful for any of his Majesty's subjects professing the Roman Catholic religion to be a member of any lay body corporate, and to hold any civil office or place of trust or profit therein, and to do any corporate act, or vote in any corporate election or other proceeding, *upon taking and subscribing the oath hereby appointed and set forth, instead of the Oaths of Allegiance, Supremacy, and Abjuration: and* upon taking *also* such other oath or oaths as may now by law be required to be taken by any persons becoming members of such lay body corporate, or being admitted to hold any office or place of trust or profit within the same.

XV. Provided nevertheless, and be it further enacted, that nothing herein contained shall extend to authorize or empower any of his Majesty's subjects professing the Roman Catholic religion, and being a member of any lay body corporate, to give any vote at, or in any manner to join in the election, presentation, or appointment of any person to any ecclesiastical benefice whatsoever, or any office or place belonging to or connected with the united Church of England and Ireland, or the Church of Scotland, being in the gift, patronage, or disposal of such lay corporate body.

XVI. Provided also, and be it enacted, that nothing in this Act contained shall be construed to enable any persons, otherwise than as they are now by law enabled, to hold, enjoy, or exercise any office, place, or dignity of, in, or belonging to, the united Church of England and Ireland, or the Church of Scotland, or any place or

* Virtually rep. 30 & 31 Vict. c. 75, s. 1. † Rep. 54 & 55 Vict. c. 67.

office whatever of, in, or belonging to, any of the Ecclesiastical Courts of judicature of England and Ireland respectively, or any court of appeal from or review of the sentences of such courts, or of, in, or belonging to, the Commissary Court of Edinburgh, or of, in, or belonging to, any cathedral or collegiate or ecclesiastical establishment, or foundation; or any office or place whatever of, in, or belonging to, any of the universities of this realm: or * any office or place whatever, and by whatever name the same may be called, of, in, or belonging to, any of the colleges or halls of the said universities, or the colleges of Eton, Westminster, or Winchester, or any college or school within this realm; or to repeal, abrogate, or in any manner to interfere with any local statute, ordinance, or rule, which is or shall be established by competent authority within any university, college, hall, or school, by which Roman Catholics shall be prevented from being admitted thereto, or from residing or taking degrees therein: Provided also, that nothing herein contained shall extend or be construed to extend to enable any person, otherwise than as he is now by law enabled, to exercise any right of presentation to any ecclesiastical benefice whatsoever; or to repeal, vary, or alter in any manner the laws now in force in respect to the right of presentation to any ecclesiastical benefice.

XVII. Provided always, and be it enacted, that where any right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of his Majesty, his heirs or successors, and such office shall be held by a person professing the Roman Catholic religion, the right of presentation shall devolve upon and be exercised by the Archbishop of Canterbury for the time being.

XVIII. And be it enacted, that it shall not be lawful for any person professing the Roman Catholic religion, directly or indirectly, to advise his Majesty, his heirs or successors, or any person or persons holding or exercising the office of guardians of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style, or title such office may be constituted, or the Lord-Lieutenant, or Lord Deputy, or other chief governor or governors of Ireland, touching or concerning the appointment to or disposal of any office or preferment in the united Church of England and Ireland, or in the Church of Scotland; and if any such person shall offend in the premises, he shall, being thereof convicted by due course of law, be deemed guilty of a high misdemeanor, and disabled for ever from holding any office, civil or military, under the Crown.

XIX. And be it enacted, that every person professing the Roman Catholic religion, who shall after the commencement of this Act be placed, elected, or chosen in or to the office of mayor, provost, alderman, recorder, bailiff, town clerk, magistrate, councillor, or common councilman, or in or to any office of magistracy or place of trust or

* So much of the Act as relates to any of the Universities of Oxford, Cambridge, and Durham, or any college therein, rep. 34 & 35 Vict. c. 26, s. 8.

employment relating to the government of any city, corporation, borough, burgh, or district within the United Kingdom of Great Britain and Ireland, shall, within one calendar month next before or upon his admission into any of the same respectively, take and subscribe the oath herein-before appointed and set forth, in the presence of such person or persons respectively as by the charters or usages of the said respective cities, corporations, burghs, boroughs, or districts ought to administer the oath for due execution of the said offices or places respectively; and in default of such in the presence of two justices of the peace, councillors or magistrates of the said cities, corporations, burghs, boroughs, or districts, if such there be; or otherwise, in the presence of two justices of the peace of the respective counties, ridings, divisions, or franchises wherein the said cities, corporations, burghs, boroughs, or districts are; which said oath shall either be entered in a book, roll, or other record to be kept for that purpose, or shall be filed amongst the records of the city, corporation, burgh, borough, or district.

XX. And be it enacted, that every person professing the Roman Catholic religion, who shall after the commencement of this Act be appointed to any office or place of trust or profit under his Majesty, his heirs or successors, shall within three calendar months next before such appointment, or otherwise shall, before he presumes to exercise or enjoy or in any manner to act in such office or place, take and subscribe the oath herein-before appointed and set forth, either in his Majesty's high court of Chancery, or in any of his Majesty's courts of King's Bench, Common Pleas, or Exchequer, at Westminster or Dublin; or before any judge of assize, or in any court of general or quarter sessions of the peace in Great Britain or Ireland, for the county or place where the person so taking and subscribing the oath shall reside; or in any of his Majesty's courts of session, justiciary, Exchequer, or jury court, or in any sheriff or stewart court, or in any burgh court, or before the magistrates and councillors of any royal burgh in Scotland, between the hours of nine in the morning and four in the afternoon; and the proper officer of the court in which such oath shall be so taken and subscribed shall cause the same to be preserved amongst the records of the court; and such officer shall make, sign, and deliver a certificate of such oath having been duly taken and subscribed, as often as the same shall be demanded of him, upon payment of 2s. 6d. for the same; and such certificate shall be sufficient evidence of the person therein named having duly taken and subscribed such oath.

XXI. And be it enacted, that if any person professing the Roman Catholic religion shall enter upon the exercise or enjoyment of any office or place of trust or profit under his Majesty, or of any other office or franchise, not having in the manner and at the times aforesaid taken and subscribed the oath herein-before appointed and set forth, then and in every such case such person shall forfeit to his Majesty the sum of 200l.; and the appointment of such person to the office, place, or franchise so by him held, shall become altogether void, and the office, place, or franchise shall be deemed and taken to be vacant to all intents and purposes whatsoever.

XXII. Provided always, that for and notwithstanding any thing in this Act contained, the oath herein-before appointed and set forth shall be taken by the officers in his Majesty's land and sea service, professing the Roman Catholic religion, at the same times and in the same manner as the oaths and declarations now required by law are directed to be taken, and not otherwise.

XXIII. And be it further enacted, that from and after the passing of this Act no oath or oaths shall be tendered to or required to be taken by his Majesty's subjects professing the Roman Catholic religion, for enabling them to hold or enjoy any real or personal property, other than such as may by law be tendered to and required to be taken by his Majesty's other subjects; *and that the oath herein appointed and set forth, being taken and subscribed in any of the courts, or before any of the persons above mentioned, shall be of the same force and effect, to all intents and purposes, as, and shall stand in the place of, all oaths and declarations required or prescribed by any law now in force for the relief of his Majesty's Roman Catholic subjects from any disabilities, incapacities, or penalties; and the proper officer of any of the courts above mentioned, in which any person professing the Roman Catholic religion shall demand to take and subscribe the oath herein appointed and set forth, is hereby authorized and required to administer the said oath to such person, and such officer shall make, sign, and deliver a certificate of such oath having been duly taken and subscribed, as often as the same shall be demanded of him, upon payment of* 1*s.; and such certificate shall be sufficient evidence of the person therein named having duly taken and subscribed such oath.*

XXIV. And whereas the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline, and government thereof, and likewise the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, are by the respective Acts of Union of England and Scotland, and of Great Britain and Ireland, established permanently and inviolably: And whereas the right and title of archbishops to their respective provinces, of bishops to their sees, and of deans to their deaneries, as well in England as in Ireland, have been settled and established by law: Be it therefore enacted, that if any person, after the commencement of this Act, other than the person thereunto authorized by law, shall assume or use the name, style, or title of archbishop of any province, bishop of any bishoprick, or dean of any deanery, in England or Ireland, he shall for every such offence forfeit and pay the sum of 100*l.*

XXV. And be it further enacted, that if any person holding any judicial or civil office, or any mayor, provost, jurat, bailiff, or other corporate officer, shall, after the commencement of this Act, resort to or be present at any place or public meeting for religious worship in England or in Ireland, other than that of the united Church of England and Ireland, or in Scotland, other than that of the Church of Scotland, as by law established, in the robe, gown, or other peculiar habit of his*

* Rep. 34 & 35 Vict. c. 48.

office, or attend with the ensign or insignia, or any part thereof, of or belonging to such his office, such person shall, being thereof convicted by due course of law, forfeit such office, and pay for every such offence the sum of 100*l.*

XXVI. And be it further enacted, that if any Roman Catholic ecclesiastic, or any member of any of the orders, communities, or societies herein-after mentioned, shall, after the commencement of this act, exercise any of the rites or ceremonies of the Roman Catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses, such ecclesiastic or other person shall, being thereof convicted by due course of law, forfeit for every such offence the sum of 50*l.*

XXVII. Provided always, and be it enacted, that nothing in this Act contained shall in any manner repeal, alter, or affect any provision of an Act made in the fifth year of his present Majesty's reign, intituled An Act to repeal so much of an Act passed in the ninth year of the reign of King William the 3rd, as relates to burials in suppressed monasteries, abbeys, or convents in Ireland, and to make further provision with respect to the burial in Ireland of persons dissenting from the Established Church.*

XXVIII. And whereas Jesuits, and members of other religious orders, communities, or societies of the Church of Rome, bound by monastic or religious vows, are resident within the United Kingdom; and it is expedient to make provision for the gradual suppression and final prohibition of the same therein: Be it therefore enacted, that every Jesuit, and every member of any other religious order, community, or society of the Church of Rome, bound by monastic or religious vows, who at the time of the commencement of this Act shall be within the United Kingdom, shall, within six calendar months after the commencement of this act, deliver to the clerk of the peace of the county or place where such person shall reside, or to his deputy, a notice or statement, in the form and containing the particulars required to be set forth in the schedule to this Act annexed; which notice or statement such clerk of the peace, or his deputy, shall preserve and register amongst the records of such county or place, without any fee, and shall forthwith transmit a copy of such notice or statement to the chief secretary of the Lord-Lieutenant, or other chief governor or governors of Ireland, if such person shall reside in Ireland, or if in Great Britain, to one of his Majesty's principal Secretaries of State; and in case any person shall offend in the premises, he shall forfeit and pay to his Majesty, for every calendar month during which he shall remain in the United Kingdom without having delivered such notice or statement as is herein-before required, the sum of 50*l.*

XXIX. And be it further enacted, that if any Jesuit, or member of any such religious order, community, or society as aforesaid,

* Rep. 53 & 54 Vict. c. 33.

shall, after the commencement of this Act, come into this realm, he shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

XXX. Provided always, and be it further enacted, that in case any natural-born subject of this realm, being at the time of the commencement of this Act a Jesuit, or other member of any such religious order, community, or society as aforesaid, shall, at the time of the commencement of this Act, be out of the realm, it shall be lawful for such person to return or to come into this realm; and upon such his return or coming into the realm he is hereby required, within the space of six calendar months after his first returning or coming into the United Kingdom, to deliver such notice or statement to the clerk of the peace of the county or place where he shall reside, or his deputy, for the purpose of being so registered and transmitted, as herein-before directed; and in case any such person shall neglect or refuse so to do, he shall for such offence forfeit and pay to his Majesty, for every calendar month during which he shall remain in the United Kingdom without having delivered such notice or statement, the sum of 50*l.*

XXXI. Provided also, and be it further enacted, that, notwithstanding anything herein-before contained, it shall be lawful for any one of his Majesty's principal Secretaries of State, being a Protestant, by a licence in writing, signed by him, to grant permission to any Jesuit, or member of any such religious order, community, or society as aforesaid, to come into the United Kingdom, and to remain therein for such period as the said Secretary of State shall think proper, not exceeding in any case the space of six calendar months; and it shall also be lawful for any of his Majesty's principal Secretaries of State, to revoke any licence so granted before the expiration of the time mentioned therein, if he shall so think fit; and if any such person to whom such licence shall have been granted shall not depart from the United Kingdom within twenty days after the expiration of the time mentioned in such licence, or if such licence shall have been revoked, then within twenty days after notice of such revocation shall have been given to him, every person so offending shall be deemed guilty of a misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

XXXII. And be it further enacted, that there shall annually be laid before both Houses of Parliament an account of all such licences as shall have been granted for the purpose herein-before mentioned within the twelve months then next preceding.

XXXIII. And be it further enacted, that in case any Jesuit, or member of any such religious order, community, or society as aforesaid, shall, after the commencement of this Act, within any part of the United Kingdom, admit any person to become a regular

ecclesiastic, or brother, or member of any such religious order, community, or society, or be aiding or consenting thereto, or shall administer or cause to be administered, or be aiding or assisting in the administering or taking, any oath, vow, or engagement purporting or intended to bind the person taking the same to the rules, ordinances, or ceremonies of such religious order, community, or society, every person offending in the premises in England or Ireland shall be deemed guilty of a misdemeanor, and in Scotland shall be punished by fine and imprisonment.

XXXIV. And be it further enacted, that in case any person shall, after the commencement of this Act, within any part of this United Kingdom, be admitted or become a Jesuit, or brother, or member of any other such religious order, community, or society as aforesaid, such person shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

XXXV. And be it further enacted, that in case any person sentenced and ordered to be banished under the provisions of this Act shall not depart from the United Kingdom within thirty days after the pronouncing of such sentence and order, it shall be lawful for his Majesty to cause such person to be conveyed to such place out of the United Kingdom as his Majesty, by the advice of his privy council, shall direct.

XXXVI. And be it further enacted, that if any offender, who shall be so sentenced and ordered to be banished in manner aforesaid, shall, after the end of three calendar months from the time such sentence and order hath been pronounced, be at large within any part of the United Kingdom, without some lawful cause, every such offender being so at large as aforesaid, on being thereof lawfully convicted, shall be transported to such place as shall be appointed by his Majesty, for the term of his natural life.

XXXVII. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend in any manner to affect any religious order, community, or establishment consisting of females bound by religious or monastic vows.

XXXVIII. And be it further enacted, that all penalties imposed by this Act shall and may be recovered as a debt due to his Majesty, by information to be filed in the name of his Majesty's Attorney-General for England or for Ireland, as the case may be, in the courts of Exchequer in England or Ireland respectively, or in the name of his Majesty's Advocate-General in the court of Exchequer in Scotland.

XXXIX. And be it further enacted, that this Act, or any part thereof, may be repealed, altered, or varied at any time within this present session of Parliament.

XL. And be it further enacted, that this Act shall commence and take effect at the expiration of ten days from and after the passing thereof.

APPENDIX B.*

11 & 12 Vict. c. 108.

An Act for enabling Her Majesty to establish and maintain Diplomatic Relations with the Sovereign of the Roman States.

[4th September, 1848.]

Whereas doubts exist whether her Majesty can lawfully establish and maintain diplomatic relations and hold diplomatic intercourse with the Sovereign of the Roman States; and it is expedient that such doubts should be removed: Be it therefore 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, that, notwithstanding anything contained in any Act or Acts now in force, it shall be lawful for her Majesty, her heirs and successors, to establish and maintain diplomatic relations and to hold diplomatic intercourse with the Sovereign of the Roman States.

II. Provided always, and be it enacted, that it shall not be lawful for her Majesty, her heirs or successors, to receive at the Court of London, as ambassador, envoy extraordinary, minister plenipotentiary, or other diplomatic agent, accredited by the Sovereign of the Roman States, any person who shall be in Holy Orders in the Church of Rome, or a Jesuit or member of any other religious order, community, or society of the Church of Rome, bound by monastic or religious vows.

III. Provided always, and be it enacted, that nothing herein contained shall repeal, weaken, or affect, or be construed to repeal, weaken, or affect, any laws or statutes, or any part of any laws or statutes, now in force for preserving and upholding the supremacy of of our lady the Queen, her heirs and successors, in all matters civil and ecclesiastical within this realm and other her Majesty's dominions, nor those laws or parts of laws now in force which have for their object to control, regulate, and restrain the acts and conduct of her Majesty's subjects, and to prohibit their communications with the sovereigns of foreign states on the said matters, all which laws and statutes ought for ever to be maintained for the dignity of the Crown and the good of the subject.

* See above, p. 35.

APPENDIX C.*

Religious Disqualifications for Offices.—Question.

Sir Colman O'Loghlen asked Mr. Attorney-General, If, according to existing law, any religious qualification is necessary for the office of Lord Chancellor of England or Lord-Lieutenant of Ireland; and especially whether a Roman Catholic or a Jew, or either of them, is elegible to hold either or both of said offices? Hansard's Debates, vol. 211, 3 Series pp. 280, 283 May 6, 1872 H. C.

The Attorney-General said, in reply, that he must preface his answer by a famous story about Lord Coke, who, being asked by James I. a question of law, desired to know in return whether it was one of common law or statute law?—because, he said, if it were one of common law he could answer it in bed, but if it were one of statute law he must get up and examine the statutes. The right hon. and learned member had asked him a complex question —whether a Roman Catholic could hold the office of Lord Chancellor of England or Lord-Lieutenant of Ireland, or whether a Jew could hold either office?

The answer to the four questions involved might not be the same in each case. The first question respecting the Lord Chancellor of England divided itself into two others. Roman Catholics were in the first instance excluded from holding the office of Lord Chancellor of England by the operation of the oaths of abjuration, allegiance, and supremacy, and by the necessity imposed upon him by the statute of making the declaration against transubstantiation. These disabilities appear to have been first created by the 25 Chas. 2, c. 2, which imposed on all holders of office civil and military, and among them the Lord Chancellor, the necessity of taking those oaths and making that declaration in the legal term next after their elevation to such office; and by the 30 Chas. 2, st. 2, c. 1, the oaths and declaration were imposed on peers and members of the House on taking their seats. The 1 Geo. 1, st. 2, c. 13, extended the oaths and declaration on ecclesiastical persons, heads of colleges, schoolmasters, barristers, attorneys, and all legal persons in the same manner as those imposed by the statute of Charles II., but extended the time to three months; and so the law remained until the 9 Geo. 2, c. 26, ss. 3, 4 and 6, which re-enacted the provisions of the Act of Charles II., but the time was extended to six months. That was the state of the law till

* See above, p. 37.

the 26 & 27 Vict. c. 125, which comprised in its schedule among the statutes totally repealed the statute of 25 Charles II.; but the body of the Act contained the proviso that the repeal of any Act contained in the schedule should not affect any enactment derived from, or incorporated with, such repealed statutes. The 29 & 30 Vict. c. 19, known as "The Parliamentary Oaths Act," repealed all that was left of the statute of Charles II.; but the statutes of the two Georges remained, except as they were altered by the Parliamentary Oaths Act. Then came the statute of 30 & 31 Vict. c. 62, and it was upon the construction of that statute that the question as to the effect of the declaration against transubstantiation on the office of Lord Chancellor of England and Lord-Lieutenant of Ireland must ultimately turn. The statute absolutely abolished the declaration, and repealed all Acts requiring it to be taken as a qualification for office by all persons whatsoever; but then the second section declared that nothing in the Act should be construed as enabling persons professing the Roman Catholic religion to hold any civil offices other than those they were at that time entitled to hold. The question was, whether the statutes imposing the declaration and oaths were abolished against all persons but Roman Catholics? By a subsequent statute all restrictions were abolished, and therefore Roman Catholics would by the effect of that statute be eligible to hold office; but if the true construction were that the old statutes were absolutely repealed, and that the effect of the second section was to re-enact them *de novo* as regarded Roman Catholics only, then the Parliamentary disability of Roman Catholics still remained. His opinion was that the former construction was the true one, and that the statutes were not repealed as against Roman Catholics. The 34 & 35 Vict. c. 48 absolutely abolished the statutes of the 1 Geo. 1 and the 9 Geo. 2 without any reservation. The effect of all this, to the best of his judgment, was, that the restrictions having been kept alive up to that time, these two Acts undoubtedly operated to exclude Roman Catholics. When these Acts were abolished without restriction, the restriction against Roman Catholics went with them, and no longer existed. He gave that as his opinion, though a right hon. friend of his differed from him, and he (the Attorney-General) was quite ready to receive correction with the greatest possible humility. The Roman Catholic Relief Act was passed in the 10th year of George IV., and it was commonly though erroneously supposed that it excluded Roman Catholics from certain offices. His opinion was that such an idea was erroneous. It substitued for certain declarations which Roman Catholics could not take certain declarations which they could take, and it left certain offices where they were before the Act, and the Roman Catholic Relief Act did not operate so material a change as had been supposed. The 21 & 22 Vict. substituted one oath for the three oaths of abjuration, allegiance, and supremacy, which up to that time had existed. The substituted oath was just

as exclusive as regarded the Roman Catholics as any of its predecessors. The 31 & 32 Vict. substituted a further oath, but that the Roman Catholics could take, and by the ninth section the Lord Chancellor was specially referred to as a person who could take the oath. The old oaths were gone, a substituted oath was enacted on all classes and individuals, and if a Roman Catholic could take the new oath he could become the Lord Chancellor. With regard to the case of the Lord-Lieutenant, by the statute of the 2nd of Elizabeth, the Lord-Lieutenant was required to take the oath of supremacy. That was, however, repealed by the statute of William and Mary, and the oaths of abjuration substituted for it, and a declaration against transubstantiation; and the Lord-Lieutenant had to take the oath up to 1867. If the Act of 1867 absolutely abolished all the statutes which imposed the declarations and oaths, and re-enacted Parliamentary disability of Roman Catholics, that disability had never been got rid of; but if the Act of 1867 was only to repeal the disenabling Acts as regarded everybody but Roman Catholics, then, as they had since been abolished without restriction, the Parliamentary disability was gone, and a Roman Catholic might become Lord-Lieutenant. With respect to the Jews they could always take the declaration and oaths, and what kept the Jews out were the words "on the true faith of a Christian;" but as the statute of 1867 omitted these words, the Jews could take the oath, and consequently hold any office either in England or Ireland.

APPENDIX D.*

18 & 19 Vict. c. 81.

An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England.

[30th July, 1855.]

1 W. & M. Sess. 1, c. 18. 52 G. 3, c. 155.

Whereas by an Act of the first session of the first year of King William and Queen Mary, chapter eighteen, and an Act of the fifty-second year of King George III., chapter one hundred and fifty-five, places of meeting of congregations or assemblies for religious worship of Protestants (save as therein excepted with respect to places of worship of the Established Church and otherwise) were required to be certified to the bishop's or archdeacon's court, or to the general or quarter sessions of the peace, and to be registered in such court, and recorded at such sessions: And

31 G. 3, c. 32.

whereas by an Act of the thirty-first year of King George III., chapter thirty-two, every place of congregation or assembly for religious worship of persons professing the Roman Catholic religion is required to be certified to and recorded at the general or quarter sessions of the peace: And whereas by the two following Acts respectively, that is to say, an Act of the session

2 & 3 W. 4, c. 115.

holden in the second and third years of King William IV., chapter one hundred and fifteen, and an Act of the session holden in the

9 & 10 Vict. c. 59.

ninth and tenth years of her Majesty, chapter fifty-nine, her Majesty's subjects professing the Roman Catholic religion, and her Majesty's subjects professing the Jewish religion, in respect of their places for religious worship, are made subject to the same laws as Protestant Dissenters: And whereas by an Act passed in

15 & 16 Vict. c. 36.

the session holden in the fifteenth and sixteenth years of her Majesty, chapter thirty-six, places of meeting of congregations or assemblies for religious worship of Protestant Dissenters are required to be certified to the Registrar-General of births, deaths, and marriages in England, and to be recorded in the General Register Office, in lieu of being certified to and registered and recorded in the bishop's or archdeacon's court, and at the general or quarter sessions, as herein-before mentioned: And whereas it is expedient that all places of religious worship, not being churches or chapels of the Established Church, should, if the congregation

* See above, p. 52.

should desire, but not otherwise, be certified to the said Registrar-General: 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:

15 & 16 Vict. c. 36 repealed, but places of worship certified thereunder to have force, &c.

I. The said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, shall be repealed: Provided always, that the certifying thereunder before the passing of this Act of any place of meeting for religious worship shall, subject to the provisions hereinafter contained, have the same force and effect from the time of such certifying as if the same had been duly certified, registered, and recorded as before the passing of the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, was required by law, and such Act and this Act had not been passed.

Places of worship to be certified to Registrar-General.

II. Every place of meeting for religious worship of Protestant Dissenters or other Protestants, and of persons professing the Roman Catholic religion, by the said Acts of King William and Queen Mary, the thirty-first and fifty-second years of King George III., and the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or any of them, required to be certified and registered or recorded, as therein mentioned, and not heretofore certified and registered or recorded in manner required by law, and every place of meeting for religious worship of persons professing the Jewish religion, not heretofore certified and registered or recorded as aforesaid, and every place of meeting for religious worship of any other body or denomination of persons, may be certified in writing to the Registrar-General of births, deaths, and marriages in England, through the Superintendent-Registrar of births, deaths, and marriages of the district in which such place may be situate; and such certificate shall be in duplicate, and upon forms in accordance with Schedule A. to this Act, or to the like effect, such forms to be provided by the said Registrar-General, and to be obtained (without payment) upon application to such Superintendent-Registrar as aforesaid; and the said Superintendent-Registrar shall, upon the receipt of such certificate in duplicate, forthwith transmit the same to the said Registrar-General, who, after having caused the place of meeting therein mentioned to be recorded as hereinafter directed, shall return one of the said certificates to the said Superintendent-Registrar, to be re-delivered by him to the certifying party, and shall keep the other certificate with the records of the General Register Office.

Places of meeting to be recorded.

III. The said Registrar-General shall cause all places of meeting for religious worship certified to him under this Act to be recorded in a book to be kept by him for that purpose at the General Register Office, and no such place of meeting as aforesaid shall be certified to or registered in any court of any bishop or archdeacon, or be certified to or recorded at any general or quarter sessions; and the certifying to the said Registrar-General

of any such place of meeting for religious worship of Protestant Dissenters or other Protestants or Roman Catholics, or persons professing the Jewish religion, and of any place of meeting for religious worship of any other body or denomination of persons, shall, subject to the provisions herein contained, have the same force and effect as if such place had been duly certified and recorded or registered and recorded as before the passing of the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, was required by law, and such Act and this Act had not been passed.

Places of meeting already certified, save those certified under 15 & 16 Vict. c. 36, may be certified to Registrar-General, and be recorded by him.

IV. Any place of meeting for religious worship heretofore certified and registered or recorded in manner required by law, and which continues to be used for religious worship, save any such place of meeting certified to the said Registrar-General under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, may, at any time after the passing of this Act be certified in writing to such Registrar-General through the Superintendent-Registrar of the district in which such place may be situate, and shall be recorded by such Registrar-General in manner herein-before mentioned concerning places of meeting not heretofore certified and registered or recorded.

Fee of 2*s.* 6*d.* to be paid with certificate to Superintendent-Registrar.

V. Upon the delivery of every certificate to the Superintendent-Registrar for transmission to the Registrar-General for the purpose of being recorded under this Act, the person delivering the same shall pay to such Superintendent-Registrar for his own use the sum of two shillings and sixpence, and it shall not be lawful to demand or take any greater fee or reward for the same respectively.

Notice to be given to Registrar-General of every place of meeting becoming disused for the purposes for which it was certified.

VI. Whenever any place of meeting for religious worship which may have been certified under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or this Act, shall have wholly ceased to be used as a place of meeting for religious worship, the person or one of the persons who so certified or last certified the same (as the case may be), or the trustee or one of the trustees for the time being of such place of meeting, or the owner or occupier or one of the owners or occupiers thereof, shall, if then resident within the Superintendent-Registrar's district within which such place shall be situate, forthwith give notice to the Registrar-General through such Superintendent-Registrar that such place has so ceased to be used as a place of meeting for religious worship, such notice to be in a form in accordance with the Schedule B. to this Act, or to the like effect, and which form shall be provided by the said Registrar-General, and may be obtained (without payment) upon application to the said Superintendent-Registrar; and the person giving such notice shall sign the same in the presence of such Superintendent-Registrar or of his deputy, who shall forthwith transmit the same through the general post to the Registrar-General at the General Register Office.

VII. The said Registrar-General shall, in the year one thousand eight hundred and fifty-six, and also at such subsequent periods as one of her Majesty's principal Secretaries of State shall from time to time in that behalf order or direct, make out and cause to be printed a list of all places of meeting which have been certified to and recorded by him under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or this Act, and the record of which has not been cancelled as herein-after provided, and shall state in such list the county and Superintendent-Registrar's district within which each of such places of meeting is situated, and the religious denomination to which the persons for the time being certifying it belong, and shall cause a copy of such list to be sent to every Superintendent-Registrar of births, deaths, and marriages in England, and such list shall be open at all reasonable times to all persons desirous of inspecting the same, on payment to such Superintendent-Registrar of a fee of one shilling.

List of certified places to be printed.

VIII. Whenever it shall appear to the satisfaction of the said Registrar-General, from any notice which shall have been given to him as aforesaid or otherwise, that any certified place of meeting for religious worship has wholly ceased to be used as such, the said Registrar-General shall cause the record of such certification to be cancelled, and shall give public notice of the cancellation thereof by advertisement in some newspaper circulating within the district in which such place of meeting is situated, and in the *London Gazette*, and shall also expunge the name of such place from the list of certified places so to be printed by him as aforesaid; and after such cancellation and publication thereof as aforesaid such place shall cease to be deemed duly certified as by law required, and shall so remain until it shall have been duly certified afresh under this Act.

Direction to the Registrar-General to cancel records of certificates of places of worship ceasing to be used as such.

IX. Every place of meeting for religious worship certified to the said Registrar-General under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or this Act, and recorded by him as aforesaid, so long as the same continues to be *bonâ fide* used as a place of religious worship, and the record of the certification thereof has not been cancelled as herein-before is provided, shall be wholly freed and exempted from the operation of an Act passed in the session holden in the sixteenth and seventeenth years of her Majesty, chapter one hundred and thirty-seven, intituled "The Charitable Trusts Act, 1853," and shall not be subject or liable to any of the provisions of the same Act, save that the exempted charities may avail themselves of the sixty-third and sixty-fourth sections of the said Act, if they shall think fit.

Certified places exempted from the operation of "The Charitable Trusts Act, 1853."

X. Nothing in this Act shall affect or be construed to affect the churches or chapels of the united Church of England and Ireland, or the celebration of Divine Service according to the rites and ceremonies of the said united Church by ministers of such church, in any place hitherto used for such purpose, or being now

Nothing to affect churches, &c., of Established Church.

or hereafter duly consecrated or licensed by any archbishop or bishop or other person lawfully authorized to consecrate or license the same.

Certificate of place having been certified to be given.

XI. The Registrar-General, on payment to him of a fee of two shillings and sixpence, shall, with respect to any place certified to him as a place of meeting for religious worship, the record whereof remains uncancelled, give to any person demanding the same a certificate, sealed or stamped with the seal of the General Register Office, that at the time or respective times in such certificate in that behalf stated the place therein described was duly certified and duly recorded as required by this Act, and that at the date of such sealed or stamped certificate the record of such certification remained uncancelled; and every such sealed or stamped certificate, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal court, shall be received as evidence of the said several facts therein mentioned, without any further or other proof of the same.

Sums received by or on account of Registrar-General to be accounted for, and expenses defrayed as other expenses of the General Register Office.

XII. All sums to be received by or on account of the Registrar-General in pursuance of this Act shall be accounted for and paid in manner directed by the said Act of the seventh year of King William the Fourth, "for registering births, deaths and marriages in England," with respect to sums received by him or on his account under the provisions of that Act; and all expenses incurred by the said Registrar-General, or by any Superintendent-Registrar, or registrar, with his sanction and acting under his direction or authority, in carrying this Act into execution and making known its provisions, shall be deemed to have been incurred in carrying on the business of the General Register Office, and be defrayed accordingly.

To remove doubts as to validity of marriage.

XIII. Notwithstanding the provisions of this or any other Act, all marriages which heretofore have been had or solemnized in any building which has been registered for the solemnization of marriages pursuant to the provisions of an Act passed in the sixth and seventh years of his late Majesty King William the Fourth, chapter eighty-five, but which may not have been certified as required by the provisions of this or any other Act, shall be as valid in all respects as if such place of worship had been so certified.

Extent of Act.

XIV. This Act shall not extend to Scotland or Ireland.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE A.

To the Registrar-General of Births, Deaths, and Marriages in England.

Directions for filling up this Schedule.

I, the undersigned * of in the County of do hereby, under and by virtue of an Act passed in the year of Her Majesty Queen Victoria, intituled "An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England," certify that a certain building known by the name of situated at in the County of within the Superintendent-Registrar's District of [was used † as a place of meeting for religious worship before the 30th day of June, 1852, and] is intended to be used as heretofore ‡ and will accordingly be forthwith used as a place of meeting for religious worship by a congregation or assembly of persons calling themselves § and I request that this certificate may be recorded in the General Register Office, pursuant to the said Act. Dated this day of 185 .

(*Signature of the party certifying.*)

‖

of the place of meeting above described.

SCHEDULE B.

To the Registrar-General of Births, Deaths, and Marriages in England.

I, the undersigned of in the County of being the person or one of the persons who certified or last certified [*or* being "the trustee," *or* "one of the trustees," *or* the "owner," *or* "occupier," *or* "one of the owners or occupiers" (*as the case may be*), of] a certain building known by the name of [*or* a certain dwelling house, &c. (*as the case may be*)] situate at in the County of within the Superintendent-Registrar's District of [and being now resident within the same district], do

---

* Here insert the name, residence, and county in which it is situate, and the rank or profession of the party certifying.

† If the place was not so used before 30th June, 1852, expunge this and the following line.

‡ If the building has not been previously used as a place of worship, erase the words "as heretofore."

§ Here insert "Protestant Dissenters," "Independents," "Particular Baptists," "Wesleyan Methodists," "Roman Catholics," "Jews," or other religious denomination of, or religious appellation adopted by, the persons on whose behalf the building is certified; but if those persons decline to describe themselves by any distinctive appellation erase the words "calling themselves," and insert "who object to be designated by any distinctive religious appellation."

‖ Insert on this line immediately under the signature the word "minister," "proprietor," "a trustee," "occupier," "an attendant," or such other words as will clearly show the connexion subsisting between the person certifying and the place of meeting.

hereby declare and give you notice, in pursuance of an Act passed in the year of Her present Majesty, chapter that the aforesaid building [*or* dwelling house, &c.], which was on the day of 185 recorded by you as a place of meeting for religious worship by a congregation or assembly of persons calling themselves [*or* by a congregation or assembly of Roman Catholics, *or* of persons belonging to the Society of Friends, *or* of persons professing the Jewish Religion (*as the case may be*)], has wholly ceased to be used as a place for public religious worship. Witness my hand, this day of 185 .

APPENDIX E.*

Letter from the Catholic Hierarchy to the Royal Commission on the Laws of Marriage, 1865.

8, York Place, Portman Square.
London, April 11, 1866.

My Lord,

We, the Catholic Archbishop and Bishops of England, who had each the honour of receiving a letter from your Lordship as Chairman of the Royal Commission on the Laws of Marriage, have thought it the most satisfactory course to defer our reply until our annual assembly in London, when we could best express our opinions in a joint letter, the result of our united deliberations.

Your Lordship invites our observations and suggestions upon the whole subject of the marriage contract (religious and secular), its proofs, its registration, and preservation of the evidence respecting it; and you more particularly request the information we can furnish with respect to the practical operation of the present law in those places with which we are best acquainted, which information extends, in our case, to the whole Catholic community of England and Wales.

It becomes our first duty to acknowledge the consideration and the courtesy of your Lordship and the Royal Commission in giving us the opportunity of presenting our suggestions upon a subject in which we are so deeply concerned; and after careful consideration, we have the honour of submitting to you the following observations:—

1. With regard to the general constitution of the Marriage Law as now in force in England, we find that in many respects it works well; but there are several points of detail which we think are open to considerable amelioration.

2. We, of course, except the Divorce Court from favourable remark, as your Lordship will be aware that in the Catholic Church a valid marriage once fully constituted has ever been held to be indissoluble. With us the contract is not only a natural and a civil, but also a spiritual contract, and a sacrament; and so long as both parties to the contract are in life, neither of them is free to contract anew. This is not merely a point of our discipline, but

* See above, p. 57.

an article of our faith and a fundamental maxim of our Christian morality.

3. With respect to the much-debated question of marrying a deceased wife's sister, with us the impediment is diriment of marriage; but urgent cases will sometimes arise when the ecclesiastical authority finds it reasonable to remove the impediment by dispensation. And among the motives for such dispensations are, the preventing of greater evils, the protection or reparation of character, the difficulty of forming another marriage, the consideration of children born, or that may be born, &c. And although cases of this kind are comparatively rare, we could wish to see the civil obstacles removed, which stand in the way of remedying what may prove to be grave matters of conscience.

4. As well for the sake of civil order as of morality we consider that, as far as is consistent with securing correct information preliminary to the marriage contract, and with ensuring due evidence of the marriage contracted, it is of the utmost importance that every facility be given for celebrating marriage, and especially as far as the poorer classes are concerned. Unhappily, in these times, it frequently becomes expedient to celebrate a marriage as soon as it is practicable, for the sake of justice, for the protection of character, or on account of pregnancy intervening; and without speedy marriage, the woman may be in danger of being deserted, or abortion may be practised, or child murder, now so prevalent, may be had recourse to. Our police-courts show again how many persons there are who live in concubinage, often having families; and this state of things arises not unfrequently, or continues, from unwillingness to face the intricacies and expenses of the registration office, preliminary to marriage. Such persons are often supposed to be married, as well by their children as by their neighbours; and then an obstacle to their marriage will arise from the publicity which they dread by reason of the preliminaries which the law requires. And although those preliminaries required to be gone through with the registration office, with the clergy, and with the registrar of the marriage, may seem to present few difficulties to those who are familiar with their operation, yet to the uninstructed people coming into contact with them for the first time in their lives, they are intricate, perplexing, and give occasion to a great many mistakes, from which arise delays that harass and distress them, causing loss of their time, which the labouring people cannot command, loss of their work, perhaps even loss of their employment. In country places where the people are farther away from those who could advise them, from the registration office, and from the church, these obstacles of marriage are proportionately increased.

5. Our clergy find the present system of choice left open between marrying at the church or at the registration office to be open to the following abuse. Persons who have some grave impediment, of which one or both are conscious, for example, that

of a prior marriage, the having a husband or wife living, it may be in Ireland, in America, or in some distant part of the country, such persons will shun the church, knowing the facilities which the clergy have for discovering the facts and the further facilities presented in the publication of banns in church; and they will have recourse to the registration office for celebrating their marriage, well aware that there they have but little chance of detection. Occasionally they will go to a registration office at a distance, and even assume fictitious names. For the same motive of escaping detection, and for another, which will be stated presently, some Catholics will likewise go to the Established Church to celebrate their marriage.

But the final result is this:—On later reflection, they do not believe in their marriage; they know that, either legally, or spiritually, or on both these grounds, the contract is invalid; and they either live miserably, or separate, or one abandons the other. In such cases it is not an unrare event for one of the parties to emigrate, to escape at once the twofold difficulty of the invalid marriage and of the law.

6. We find the double fee a great obstacle to conscientious marriage, that is, to marriage in the church, which alone satisfies the conscience of Catholics; and not unfrequently this obstacle will keep persons living on in a state of concubinage.

It is but just, however, to observe, that this obstacle is not occasioned by the clergy, for not only are fees to them quite voluntary, but in some fourth of the cases they receive no fee whatever; and in the average, where the poorer classes are concerned, not more than from one to two shillings are paid them. Indeed, instances are not so very rare, where, to save the persons concerned from an immoral life, the clergy have themselves paid the registration fee.

But the fee of 5*s.* to the registration office and of 2*s.* to the registrar of the marriage have their weight with the poor, and especially at a time when they are incurring other and unusual expenses; and moreover, they are ashamed if they cannot offer something also to their clergy, who, in their estimation, and it is a reasonable one, have had the chief trouble with their marriage; who have had to make all the due inquiries, who have perhaps had to correspond for them to a distance; who have had to instruct them and to prepare them for the sacraments preliminary to that of marriage; and who often besides have to instruct and guide them, or to rectify their mistakes, with respect to the rules of registration.

These remarks will make it obvious to your Lordship why the double fee operates as an obstacle to marriage.

7. But this obstacle becomes much more serious in marriages of conscience, especially where persons have been living for years in a state of concubinage, where a family has come in consequence, and where the fact of their being unmarried is unknown. In such cases it is of the greatest importance that marriage be made as

easy of celebration as possible, so that the first good disposition that can be awakened in the offenders may be taken advantage of. But here, again, besides the perplexities which seize upon the imagination of the poor touching the intricacies of the preliminaries, and besides the consideration of the cost, another and a graver difficulty arises, and that is the dread of publicity occasioned by the intervention of two officials besides the clergy.

8. In some instances, the difficulty of teaching the uneducated poor to attend to the preliminary notification of their marriages arises from the fact that in one of our ecclesiastical districts or congregations, two registration districts may be wholly or partially included; and it is hard to make the parties wishing to be married understand that they cannot deal with the same registrar before whom their friends and relations living in the same neighbourhood and under the same priest, and attending the same registered church, have arranged their marriage.

9. For the reasons explained under the five preceding heads, your Lordship and the Royal Commission will not fail to be impressed with the exceeding importance of removing, in all practical ways, the obstacles which at present stand in the way of ensuring the validity of marriages. And, in so far as Catholic marriages are concerned, after the most careful consideration of the question, we are of opinion that the most effectual remedy for most of the difficulties above alleged, would be to constitute the Catholic clergy the legal witnesses of the marriages celebrated by them, as is the case with the clergy of the Established Church, with the secretaries of the Jewish synagogues, and with the clergy of the Catholic Church in Ireland.

Your Lordship cannot be unaware how strict the clergy of the Catholic Church are in whatever concerns the laws of marriage, and how vigilantly the execution of those laws is watched over by their prelates. It is this strictness and vigilance which furnish the best guarantee against illegal or invalid marriages being celebrated in our churches. Moreover, as so large a portion of our flocks belong to the migratory portion of the population, our clergy need and have facilities at their disposal for making preliminary inquiries in almost any part of the world, which gives them great advantages in guarding against deception.

10. We may further observe that the rites and forms used in the Catholic Church are identical with those of the Established Church, and that the form of contract repeated before the registrar is essentially the same as that which has been already uttered in the religious rite; and this repetition to the registrar of what has been already declared to the clergyman, is apt to have a ludicrous effect, without any comprehensible reason for it.

11. Cases arise where a marriage is valid in civil law, but null and void in face of the Church. In such cases the consciences of the contracting parties have to be satisfied. The law has removed this difficulty in cases where the marriage has been celebrated in

the registration office, but not where the marriage has been performed in the Established Church. Thus whilst an Anglican clergyman is safe from penalties in renewing a marriage celebrated by us, a Catholic priest incurs felony for renewing a marriage celebrated in the Established Church, however necessary it may be for the relief of consciences. We therefore request to draw your Lordship's attention to this hardship, confident that no practical objection can exist against the equalisation of the law.

12. With respect to the registration of churches and chapels, the present law requires twelve months' previous notice, the declaration of twenty householders, and a fee of £3. Upon these regulations we have to observe that it is not unfrequent that some new work, mine, manufacture, or other enterprise, suddenly brings together a number of Catholic workmen with their families, who have to be provided with a place of worship and a school, and who have to support a clergyman all out of their own industry, and by the joint contribution of small offerings. In these cases, not to speak of others, it is sometimes almost impossible to find twenty Catholic householders. The place of worship erected is required as soon as practicable for marriages, for the nearest Catholic place of worship may be at a considerable distance, and the fee of £3 becomes an item of some consideration, where everything has to be provided from the pence of the people.

13. We would also suggest that in chapels attached to camps, *e.g.*, Shorncliffe or Aldershot, where none of the congregation are householders, the chapel be allowed to be registered on the certificate of the Secretary of State for War, that the chapel is used for Divine Service.

Respectfully recommending these suggestions to the kind and impartial consideration and eminent legal knowledge of your Lordship and the Royal Commissioners,

We beg to remain,

My Lord,

Your obedient humble servants,

+ HENRY EDWARD MANNING.
+ THOMAS JOSEPH BROWN.
+ WILLIAM BERNARD ULLATHORNE.
+ THOMAS GRANT.
+ WILLIAM TURNER.
+ JAMES BROWN.
+ ALEXANDER GOSS.
+ WILLIAM VAUGHAN.
+ WILLIAM CLIFFORD.
+ FRANCIS KERRIL AMHERST.
+ RICARDUS ROSKELL.
+ ROBERT CORNTHWAITE.

To the Lord Chelmsford,
President of the Royal Commission on the Marriage Laws.

APPENDIX F.*

Extract from the Report of the Royal Commission on the Laws of Marriage, 1865.

"The presence of a civil registrar is, in England, now required on pain of nullity, at all marriages except those of the Established Church, and of Quakers and Jews; but it is not required either at regular marriages in Scotland, or at any marriage whatever (except those solemnised in the registrar's offices), in Ireland. When the duty of registrars *quoad hoc* is performed by the officiating ministers or other official witnesses of any religious denomination (as is the case in all marriages by the United Church of England and Ireland, and by Jews and Quakers, and in all marriages by Presbyterian and other Protestant Nonconformist ministers in Ireland), the further security of the attendance of the civil registrar does not seem to be important, still less to be a condition upon which it can be necessary to make the validity of a marriage depend. We are confirmed in this view, by considering how very insignificant a proportion the number of marriages to which this requirement is now applicable, bears to the whole number celebrated every year in the United Kingdom; and by the fact, that the legislature, after some years' experience of a law requiring the presence of a civil registrar at all marriages by non-Presbyterian Protestant Nonconformists in Ireland, deliberately repealed it, and that no evil is shown to have resulted from that change. The English Roman Catholic bishops, after describing the incidence upon their own communion of certain difficulties, considered by them to arise out of this state of the English Marriage Law, have recommended by anticipation, the course which we are prepared to advise; stating their opinion, that the most effectual remedy for most of these difficulties would be, 'to constitute the Catholic clergy the legal witnesses of the marriages celebrated by them, as is the case with the clergy of the Established Church, with the secretaries of the Jewish Synagogues, and with the clergy of the Catholic Church in Ireland.' They add, that the form of words required to be repeated before the registrar, when he attends at their marriages, is essentially the same as that which has been already uttered in the religious rite; and that 'this

* See above, p. 57.

repetition to the registrar of what has already been declared to the clergyman is apt to have a ludicrous effect, without any comprehensible reason for it.'

"We shall propose, in a later part of this Report, that similar duties with respect to registration to those now performed by the clergy of the United Church of England and Ireland, the officiating ministers at Presbyterian and other Protestant Nonconformist marriages in Ireland, and the official witnesses of the marriages of Quakers and Jews, should in all cases and in all parts of the United Kingdom be performed by the officiating minister or official witness of marriages, whoever he may be; and if this recommendation should be adopted, we think that the law should no longer insist upon the presence of a civil registrar at any marriage solemnised elsewhere than in his own office" (p. xxxvii.).

APPENDIX G.*

BURIAL LAWS AMENDMENT ACT, 1880.

[43 & 44 Vict. Ch. 41.]

ARRANGEMENT OF SECTIONS.

[7th September, 1880.]

WHEREAS it is expedient to amend the law of burial in England and the Channel Islands:

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:

After passing of Act, notice may be given that burial will take place in

1. After the passing of this Act 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,

* See above, p. 62.

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. churchyard or graveyard without the rites of the Church of England.

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.

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. Paupers.

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, Time of burial to be stated, subject to variation.

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.

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.

Burial may be with or without religious service.

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 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.

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.

Act not to give right of burial where no previous right existed.

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.

Burials under Act to be registered.

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 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.

Order of coroner or certificate of registrar to be delivered to relative, &c., instead of to person who buries.

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 fails so to do shall be liable to a penalty not exceeding ten pounds.

Liberty to use burial service of Church of England in unconsecrated ground.

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 rights of the said church in any unconsecrated burial ground or cemetery, or in any 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.

Relief of clergy of Church of England from penalties in certain cases.

13. From and after the passing of this Act, 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 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.

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.

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.

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 Act, 1880.

To the Rector [*or as the case may be,*] of .

SCHEDULE B.

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 .

APPENDIX H.*

36 & 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.]

Whereas it is expedient to afford greater facilities for granting sites for buildings for religious worship and for burial places in England and Wales:

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:

Landlords empowered to convey land to be used as sites for places of worship and residence of the minister.

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 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

If lands cease to be used for the purposes of the Act, then to revert.

* See above, p. 64.

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 all intents and purpose 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 freehold 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.

As to payment of purchase-money, &c.

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 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.

Persons under disability empowered to convey lands for the purposes of the Act.

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 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, &c.

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 an Act passed in the thirty-sixth and thirty-seventh years of Her Majesty Queen Victoria, intituled 'An Act to afford further facilities for the conveyance of land for sites for places of religious worship and for burial places,' 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 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.

Ecclesiastical Commissioners may accept trusts.

5. The persons herein-before 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 for England, 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.

Extent of Act.

6. The provisions of this Act shall not extend to Scotland or Ireland.

Short title.

7. This act may be cited as "The Places of Worship Sites Act, 1873."

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45 & 46 Vict. c. 21.

An Act to amend the Places of Worship Sites Act, 1873.

[12th July, 1882.]

36 & 37 Vict. c. 50.

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:

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 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 69, 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 W. 4, c. 69.

(*d.*) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

Power for limited owner in case of unborn or unascertained remainderman to convey, &c.

2. The said Act shall be construed as extending to authorise 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.

3. This Act may be cited as the Places of Worship Sites Amendment Act, 1882. Short title.

APPENDIX I.*

49 & 50 Vict c. 27.

An Act to amend the Law relating to the Guardianship and Custody of Infants. [25th June, 1886.]

Whereas it is expedient to amend the law relating to the guardianship and custody of infants:

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 Guardianship of Infants Act, 1886.

On death of father, mother to be guardian alone or jointly with others.

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this Act then from and after the passing of this Act, the mother if surviving shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the Court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

Mother may appoint guardian, in certain cases.

3.—(1). The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly.

(2.) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the Court, after her death, if it be shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians who shall thereupon be authorised and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the Court shall think right.

(3.) In the event of guardians being unable to agree upon a

* See above, p. 69.

question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding the matters in difference as it shall think proper.

Powers of guardian

4. Every guardian in England and Ireland under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be), of an infant as any guardian appointed by will or otherwise now has in England under the Act twelve Charles the Second, chapter twenty-four, or in Ireland under the Act of the Irish Parliament fourteen and fifteen Charles the Second, chapter nineteen, or otherwise.

Court may make orders as to custody.

5. The Court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think fit.

Power to Court to remove guardian.

6. In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court of Session, may in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.

7. In any case where a decree for judicial separation, or a decree either nisi or absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and, in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

Application of Act to Scotland.

8. In the application of this Act to Scotland the word guardian shall mean tutor, and the word infant shall mean pupil.

Interpretation of terms.

9. In the construction of this Act the expression "the Court" shall mean—

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside:

In Ireland the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside:

In Scotland the Court of Session or the sheriff court within whose jurisdiction the respondent or respondents or any of them may reside.

Any application under this Act to the High Court of Justice in England or to the High Court of Justice in Ireland shall be made to the Chancery Division of the said Courts respectively in such manner as may be prescribed by Rules of Court.

In Scotland the expression "the Court of Session" shall mean either division of the said court, and in vacation the Lord Ordinary on the Bills.

As to removing proceedings and appeals.

10. In England and Ireland when any application has been made under this Act to a county court the High Court of Justice shall, at the instance of any party to such application, order such application to be removed to the High Court of Justice and there proceeded with before a judge of the Chancery Division on such terms as to costs as it may think proper.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this Act; and, subject to any rules of court made after the passing of this Act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

In Scotland any application made under this Act to a sheriff court may be removed to the Court of Session, at the instance of any party, in the manner provided by and subject to the conditions prescribed by the ninth section of the Sheriff Courts (Scotland) Act, 1877.

40 & 41 Vict. c. 50.

In Scotland an appeal shall lie to either division of the Court of Session from any order made by the Lord Ordinary on the Bills or a sheriff court under this Act.

Rules as to procedure.

11. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings may from time to time be made—

(*a*) so far as respects the High Court of Justice or Her Majesty's Court of Appeal in England or Ireland by Rules of Court; and

(*b*) so far as respects the Court of Session in Scotland by Act of Sederunt; and

(*c*) so far as respects any county court in England or Ireland and the sheriff court in Scotland in like manner as rules and orders respecting those courts can respectively for the time being be made.

Tutors.

12. In Scotland tutors being administrators-in-law, tutors-nominate, and guardians appointed or acting in terms of this Act who shall, by virtue of their office, administer the estate of any pupil, shall be deemed to be tutors within the meaning of an Act passed in the twelfth and thirteenth years of the reign of Her Majesty,

intituled "An Act for the better protection of the property of pupils, absent persons, and persons under mental incapacity, in Scotland," and shall be subject to the provisions thereof: Provided always, that such tutors being administrators-in-law, tutors-nominate, and guardians aforesaid shall not be bound to find caution in terms of the twenty-sixth and twenty-seventh sections of the last recited Act, unless the Court, upon the application of any party having interest, shall so direct.

Saving clause.

13. Nothing in this Act contained shall restrict or affect the jurisdiction of the High Court of Justice in England, and of the High Court of Justice in Ireland, or of any division of the said Courts, and of the Court of Session in Scotland, to appoint or remove guardians, or (in the case of Scotland) tutors or factors *loco tutoris* or otherwise in respect of infants.

APPENDIX J.*

36 Vict. c. 12.

An Act to amend the Law as to the Custody of Infants.
[24th April, 1873.]

Whereas it is expedient further to amend the law relating to the custody of infants:

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:

Court of Chancery may order that mother may have access to and custody of infant under sixteen years.

1. From and after the passing of this Act it shall be lawful for the High Court of Chancery in England or in Ireland respectively, upon hearing the petition by her next friend of the mother of any infant or infants under sixteen years of age, to order that the petitioner shall have access to such infant or infants at such times and subject to such regulations as the Court shall deem proper, or to order that such infant or infants shall be delivered to the mother, and remain in or under her custody or control, or shall, if already in her custody or under her control, remain therein until such infant or infants shall attain such age, not exceeding sixteen, as the Court shall direct; and further, to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or infants, and otherwise, as the said Court shall deem proper. †

In case of separation deed between father and mother.

2. No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother: Provided always, that no Court shall enforce any such agreement if the Court shall be of opinion that it will not be for the benefit of the infant or infants to give effect thereto.

Repeal of 2 & 3 Vict. c. 54.

3. The Act of the second and third Victoria, chapter fifty-four, intituled "An Act to amend the law relating to the custody of infants," shall be and is hereby repealed.

* See above, p. 70.

† This section is now superseded by the Guardianship of Infants Act, 1886, s. 5, above, p. 211.

APPENDIX K.*

52 & 53 Vict. c. 44.

An Act for the Prevention of Cruelty to, and better Protection of, Children. [26th August, 1889.]

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:

Punishment for ill-treatment and neglect of children.

1. Any person over sixteen years of age who, having the custody, control, or charge of a child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, wilfully ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering, or injury to its health, shall be guilty of a misdemeanor, and, on conviction thereof on indictment, shall be liable, at the discretion of the Court, to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition to payment thereof, to imprisonment, with or without hard labour, for any term not exceeding two years, and on conviction thereof by a court of summary jurisdiction, in manner provided by the Summary Jurisdiction Acts, shall be liable, at the discretion of the Court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

Power to increase fine where offender interested in death of child.

2. If it be proved that a person convicted on indictment as aforesaid was interested in any sum of money accruable or payable in the event of the death of the child, and had knowledge that such sum of money was accruing or becoming payable, the Court may, in its discretion, increase the amount of the said fine so that the fine shall not exceed two hundred pounds. Such interest as aforesaid in any sum of money accruable or payable in the event of the death of the child shall be charged in the indictment and put to the jury in the same way, as far as may be, as a previous conviction is now charged and put.

* See above, p. 73.

3. Any person who—

Restrictions on employment of children.

(*a*) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, to be in any street for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or

(*b*) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between ten p.m. and five a.m.; or

(*c*) causes or procures any child, under the age of ten years to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment for the purpose of singing, playing, or performing for profit, or offering anything for sale,

shall, on conviction thereof by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts, be liable, at the discretion of the Court, to a fine not exceeding twenty-five pounds or alternatively, or in default of payment of the said fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

Provided that any local authority may, if they think it necessary or desirable so to do, from time to time by byelaw extend or restrict the hours mentioned in sub-section (*b*) of this section, either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein.

Provided also, that in the case of any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid, where it is shown to the satisfaction of a petty sessional court, or in Scotland the school board, that proper provision has been made to secure the health and kind treatment of any children proposed to be employed thereat, it shall be lawful for the said Court or school board, anything in this Act notwithstanding, to grant a licence for such time and during such hours of the day, and subject to such restrictions and conditions as it may think fit for any child exceeding seven years of age, of whose fitness to take part in such entertainment or series of entertainments without injury the said Court or school board is satisfied, to take part in such entertainment or series of entertainments, and such licence may at any time be varied, added to, or rescinded by the said Court or school board upon sufficient cause being shown;

and such licence shall be sufficient protection to all persons acting under or in accordance with the same.

A Secretary of State may assign to any inspector appointed, or to be appointed under section sixty-seven of the Factory and Workshop Act, 1878, specially and in addition to any other usual duties, the duty of seeing whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector has to enter, inspect, and examine a factory or workshop under section sixty-eight of the same Act.

Nothing in this section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878.

So much of sub-section (*c*) of this section as makes it an offence to cause or procure a child to be in premises licensed according to law for public entertainment, or in any circus or other place of public amusement, for the purpose of singing, playing, or performing for profit, shall not come into operation until the first day of November one thousand eight hundred and eighty-nine. 39 & 40 Vict. c. 79. 41 & 42 Vict. c. 78.

4.—(1.) Any constable may take into custody without warrant any person who within view of such constable commits an offence under this Act, where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable; and any constable may take to a place of safety any child in respect of whom an offence under section one or sub-section (*a*) of section three of this Act has been committed, and the child may there be detained until it can be brought before a court of summary jurisdiction, and such Court may cause the child to be dealt with as circumstances may admit and require until the charge made against any person in respect of the said offence has been determined by the committal for trial, or conviction, or discharge of such person. Taking of offender into custody, and protection of child.

(2.) Where a constable arrests any person without warrant in pursuance of this section the inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

5.—(1.) Where a person having the custody or control of a child, being a boy under the age of fourteen, or a girl under the age of sixteen years, has been

(*a*) convicted of committing in respect of such child an offence under section one of this Act, or any offence involving bodily injury to the child and punishable with penal servitude; or Disposal of child by order of Court.

(*b*) committed for trial for any such offence; or
(*c*) bound over to keep the peace towards such child,

any person may bring such child before a petty sessional court; and the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order that the child be taken out of the custody of such person and committed to the charge of a relation of the child, or some other fit person named by the Court, such relation or other person being willing to undertake such charge until it attains the age of fourteen years, or in the case of a girl sixteen years, or in either case for any shorter period, and may of his own motion or on the application of any person from time to time renew, vary, and revoke any such order: Provided that no order shall be made under this section unless a parent of the child is under committal for trial for having been, or has been proved to have been, party or privy to the offence, or has been bound over to keep the peace towards such child.

(2.) Any person to whom a child is so committed shall, whilst the order is in force, have the like control over the child as if he were its parent, and shall be responsible for its maintenance, and the child shall continue under the control of such person, notwithstanding that it is claimed by its parent; and any Court having power so to commit a child shall have power to make the like orders on the parent of the child to contribute to its maintenance during such period as aforesaid as if the child were detained under the Industrial Schools Acts, and such orders may be made on the complaint or application of the person to whom the child is for the time being committed, and the sums contributed by the parent shall be paid to such person as the Court may name, and be applied for the maintenance of the child. In determining on the person to whom the child shall be so committed, the Court shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a person of the same religious persuasion, and such religious persuasion shall be specified in the order; and in any case where the child has been placed pursuant to any such order with a person not of the same religious persuasion as that to which the child belongs, the Court shall, on the application of any person in that behalf, and on its appearing that a fit person of the same religious persuasion is willing to undertake the charge, make an order to secure his being placed with a person of the same religious persuasion.

Provided that if the order to commit the child to the charge of some relation or other person be made in respect of any person having been committed for trial for an offence, as specified in subsection (1) (*b*) of this section, the Court shall not be empowered to order the parent of the child to contribute to its maintenance prior to the trial of such person; and if he be acquitted of such charge, or if such charge be dismissed for want of prosecution, then any order that may have been made under this section shall forthwith

be void, except with regard to anything which may have been lawfully done under it.

(3.) One of Her Majesty's Principal Secretaries of State in England, and in Scotland the Secretary for Scotland, and in Ireland the Lord-Lieutenant of Ireland may at any time in his discretion discharge a child from the custody of any person to whom it is committed, in pursuance of this section, either absolutely or on such conditions as such Secretary of State, Secretary, or Lord-Lieutenant approves, and may, if he shall think fit, from time to time make, alter, or revoke rules in relation to children so committed to any person, and to the duties of such persons with respect to such children.

Power of search.

6.—(1.) If it appears to any stipendiary magistrate or to any two justices of the peace, on information made before him or them on oath by any person who, in the opinion of the magistrate or justices, is *bonâ fide* acting in the interest of any child, that there is reasonable cause to suspect that such child, being a boy under the age of fourteen years, or a girl under the age of sixteen years, has been or is being ill-treated or neglected in any place within the jurisdiction of such magistrate or justices in a manner likely to cause the child unnecessary suffering or to be injurious to its health, such magistrate or justices may issue a warrant authorising any person named therein, to search for such child, and if it is found to have been or to be ill-treated or neglected in manner aforesaid, to take it to and detain it in a place of safety until it can be brought before a court of summary jurisdiction; and the Court before whom the child is brought may cause it to be dealt with in the manner provided by section four.

Provided always, that the powers herein-before conferred on any two justices may be exercised by any one justice, if upon the information it appears to him to be a case of urgency: Provided also, that in the case of Scotland the jurisdiction hereby conferred on a magistrate or two justices shall be exercised only by a sheriff or sheriff substitute.

(2.) The magistrate or justices or justice, or in Scotland the sheriff or sheriff substitute, issuing such warrant may by the same warrant cause any person accused of any offence in respect of the child, to be apprehended, and brought before a justice, and proceedings to be taken for punishing such person according to law.

(3.) Any person authorised by warrant under this section to search for any child, and to take it to and detain it in a place of safety, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child therefrom.

(4.) Provided always, that every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other superior officer of police, who shall be accompanied by the person making the information, if such person so desire, unless the magistrate, justices, or justice otherwise direct,

and may also, if the magistrate, justices, or justice so direct, be accompanied by a registered medical practitioner.

Evidence of accused person.

7. In any proceeding against any person for an offence under this Act, such person shall be competent but not compellable, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Evidence of child of tender years.

8. Where, in any proceeding against any person for an offence under this Act, the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the Court understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the Court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. And the evidence of such child, though not given on oath or affirmation, but otherwise taken and reduced into writing, in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848, or of section fourteen of the Petty Sessions (Ireland) Act, 1851, shall be deemed to be a deposition within the meaning of those sections:

11 & 12 Vict. c. 42.
14 & 15 Vict. c. 93.

Provided that—

(*a.*) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused: and

(*b.*) Any child whose evidence is received as aforesaid, and who shall wilfully give false evidence, shall be liable to be indicted and tried for such offence, and on conviction thereof may be adjudged such punishment as is provided for by section eleven of the Summary Jurisdiction Act, 1879, in the case of juvenile offenders.

41 & 42 Vict. c. 49.

Presumption of age of child.

9. Where a person is charged with an offence under this Act in respect of a child who is alleged in the charge or indictment to be under any specified age, and the child appears to the Court to be under that age, such child shall for the purposes of this Act be deemed to be under that age, unless the contrary is proved.

Appeal from summary conviction to general or quarter sessions.

10. When, in pursuance of this Act, any person is convicted by a court of summary jurisdiction of an offence, and such person did not plead guilty or admit the truth of the information, or when in the case of any application to the Court under section five of this Act, any party thereto thinks himself aggrieved by any order or decision of the Court, he may appeal against such conviction, or order, or decision, in England and Ireland to a court of general or quarter sessions, and in Scotland to the High Court of Justiciary in the manner provided by the Summary Prosecutions Appeals (Scotland) Act, 1875, or any Act amending the same.

11. Where a misdemeanor under this Act is tried on indictment, the expenses of the prosecution shall be defrayed in like manner as in the case of a felony.

12. The guardians of any union or parish, or in Scotland the parochial board of any parish or combination, may, out of the funds under their control, pay the reasonable costs and expenses of any proceedings which they have directed to be taken under this Act in regard to the ill-treatment, neglect, abandonment, or exposure of any child, and, in the case of a union, shall charge such costs and expenses to the common fund. 38 & 39 Vict. c. 62. Expenses of prosecution. Guardians may pay costs of proceedings.

13. Every byelaw under this Act shall be subject— Provision as to byelaws.

(*a.*) In England to section one hundred and eighty-four of the Public Health Act, 1875, as if every local authority in England under this Act were a local authority within the meaning of that section, but with the substitution of one of Her Majesty's Principal Secretaries of State for the Local Government Board; and 38 & 39 Vict. c. 55.

(*b.*) In Scotland to so much of section sixty-two of the Public Health (Scotland) Act, 1867, as provides for the confirmation of rules and regulations and the proceedings preliminary to confirmation as if such rules and regulations included byelaws under this Act, and the local authority under this Act were a local authority within the meaning of that section, but with the substitution of the Secretary for Scotland for the Board of Supervision; and 30 & 31 Vict. c. 101.

(*c.*) In Ireland to section two hundred and twenty-one of the Public Health (Ireland) Act, 1878, with the substitution of the Lord-Lieutenant for the Local Government Board. 41 & 42 Vict. c. 52.

14. Nothing in this Act contained shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer punishment to such child. Act not to take away right of parent, &c., to administer punishment.

15. Where an offence against this Act is also punishable under any other Act, or at common law, it may be prosecuted and punished either under this Act, or under the other Act, or at common law, so that no person be punished twice for the same offence. Saving for proceedings under other laws.

16. Sections eight and eleven of this Act shall not apply to Scotland. Ss. 8, 11 not to apply to Scotland.

17. In this Act— Definitions.

The expression "Summary Jurisdiction Acts" means—

(*a.*) as regards England, the Summary Jurisdiction (English) Acts; and 27 & 28 Vict. c. 53.

(*b.*) as regards Scotland, the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act amending the same; and 44 & 45 Vict. c. 33.

(*c.*) as regards Ireland, within the police district of Dublin metropolis, the Acts, regulating the powers and duties of

14 & 15 Vict. c. 93.

justices of the peace for that district, or of the police for that district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same;

The expression "court of summary jurisdiction"—

42 & 43 Vict. c. 49.

(*a.*) as regards England, has the same meaning as in the Summary Jurisdiction Act, 1879; and

(*b.*) as regards Scotland, means the sheriff, or sheriff substitute; and

(*c.*) as regards Ireland, means any justice or justices of the peace, police magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to.

The expression "petty sessional court"—

(*a.*) as regards England, has the same meaning as in the Summary Jurisdiction Act, 1879;

(*b.*) as regards Scotland and Ireland, has the same meaning as the expression court of summary jurisdiction as above defined.

The expression "street" includes any highway or other public place, whether a thoroughfare or not;

The expression "place of safety" includes a workhouse and any place certified by the local authority by byelaw under this Act for the purposes of this Act;

The expression "parent" when used in relation to a child includes guardian and every person who is by law liable to maintain the child;

11 & 12 Vict. c. 42. 14 & 15 Vict. c. 93.

The expression "committed for trial" means, as regards England or Ireland, committed to prison or admitted to bail in manner provided in the Indictable Offences Act, 1848, or the Petty Sessions (Ireland) Act, 1851.

The expression "Industrial Schools Acts" means—

29 & 30 Vict. c. 118.

(*a.*) as regards England and Scotland, the Industrial Schools Act, 1866, and the Acts amending the same, or any Act of the present or any future session of Parliament repealing that Act and re-enacting the provisions thereof with or without modifications, and

31 & 32 Vict. c. 25.

(*b.*) as regards Ireland, the Industrial Schools Act (Ireland), 1868, and the Acts amending the same.

The expression "local authority" means, as regards any borough in England, the council of the borough; as regards the city of London, the common council; as regards the county of London, the county council; and as regards any other place in England, the urban or rural sanitary authority; as regards any burgh in Scotland being either a royal burgh or a burgh

returning or contributing to return a member to Parliament, the town council; as regards any police burgh in Scotland, the Commissioners of Police thereof, and as regards any county in Scotland exclusive of any such burgh, the Commissioners of Supply, or in their place any other body by any Act of this present session of Parliament entrusted with the administrative business of such county; and as regards Ireland the sanitary authority within the meaning of the Public Health (Ireland) Act, 1878. 41 & 42 Vict. c. 52.

The expression "Lord-Lieutenant" includes Lords Justices or other Chief Governor or Governors of Ireland for the time being.

As regards Scotland—

The expression "misdemeanor" means crime and offence;

The expression "enter into a recognisance with or without sureties" means grant a bond of caution;

The expression "justice of the peace" means sheriff or sheriff substitute;

The expression "workhouse" means poor house;

18. Section thirty-seven of the Poor Law Amendment Act, 1868, is hereby repealed. Repeal of 31 & 32 Vict. c. 122, s. 37.

Provided that such repeal shall not affect—

(*a.*) Anything duly done or suffered under the enactment hereby repealed; or

(*b.*) Any penalty, forfeiture, or punishment incurred under any offence committed against the enactment hereby repealed; or

(*c.*) Any legal proceeding in respect of any penalty, forfeiture, or punishment;

and any such legal proceeding may be instituted and carried on, and the penalty, forfeiture, or punishment enforced, in like manner as if this Act had not passed.

19. This Act may be cited as the Prevention of Cruelty to, and Protection of, Children Act, 1889. Short title.

APPENDIX L.*

52 & 53 Vict. c. 56.

An Act to amend the Law respecting Children in Workhouses, and respecting the borrowing of Money by Guardians and Managers of District Schools, and respecting the managers of the Metropolitan Asylum District. [30th August, 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Control of guardians over child deserted by parent.

1.—(1.) Where a child is maintained by the guardians of any union and was deserted by its parent, the guardians may at any time resolve that such child shall be under the control of the guardians until it reaches the age, if a boy, of sixteen, and if a girl of eighteen years, and thereupon until the child reaches that age all the powers and rights of such parent in respect of that child shall, subject as in this Act mentioned, vest in the guardians;

Provided that the guardians may rescind such resolution, if they think that it will be for the benefit of the child that it should be rescinded, or may permit such child to be either permanently or temporarily under the control of such parent, or of any other relative, or of any friend.

(2.) A court of summary jurisdiction, if satisfied on complaint made by a parent of the child, that the child has not been maintained by the guardians, or was not deserted by such parent, or that it is for the benefit of the child that it should be either permanently or temporarily under the control of such parent, or that the resolution of the guardians should be determined, may make an order accordingly, and any such order shall be complied with by the guardians, and if the order determines the resolution, the resolution shall be thereby determined as from the date of the order, and the guardians shall cease to have the rights and powers of the parent as respects such child.

(3.) For the purposes of this Act a child shall be deemed to be maintained by the guardians if it is wholly or partly maintained by them in a workhouse or in any district school, separate school, separate infirmary, sick asylum, hospital for infectious diseases,

* See above, p. 73.

institution for the deaf, dumb, blind, or idiots, or any certified school under the Act of the session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter forty-three, or is boarded out by the guardians, whether within or without the limits of the union.

(4.) Where a parent is imprisoned under a sentence of penal servitude or imprisonment in respect of an offence committed against a child, this section shall apply as if such child had been deserted by that parent.

(5.) Nothing in this section shall relieve any person from any liability to contribute to the maintenance of a child, but the fact of such contribution being made shall not deprive the guardians of any of the powers and rights conferred on them by this section.

(6.) Nothing in this section shall authorise the guardians to cause a child to be educated in any religious creed other than that in which the child would have been educated but for any resolution of the guardians under this section, nor affect the enactments respecting the religious education of a child maintained by the guardians, or respecting the right of any minister of the same religious persuasion as the child to visit and instruct the child, nor affect any of the enactments specified in the Schedule to this Act, which enactments relate to the religious education of children maintained by guardians.

Application to Ireland.

9. The section of this Act relating to the control of the guardians of a union over a child deserted by its parents, but no other section, shall apply to Ireland, and in such application of the said section to Ireland,—

(*a.*) The word "Guardians" means the Board of Guardians of the poor for a union, under the provisions of the Act of the session of the first and second years of the reign of Her present Majesty, chapter fifty-six, intituled "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same:

1 & 2 Vict. c. 56.

The word "union" means a union for the relief of the destitute poor under the provisions of the said Acts:

(*b.*) A court of summary jurisdiction shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace, and sitting at some court or other place appointed for the administration of justice.

Short title and construction.

10. This Act may be cited as the Poor Law Act, 1889.

Expressions in this Act when used with reference to England shall have the same meaning as in the Poor Law Act, 1879.

42 & 43 Vict. c. 54.

APPENDIX M.*

CHAPTER 3.

An Act to amend the Law relating to the Custody of Children.
[26th March, 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:

Power of Court as to production of child.

1. Where the parent of a child applies to the High Court or the Court of Session for a writ or order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may in its discretion decline to issue the writ or make the order.

Power to Court to order repayment of costs of bringing up child.

2. If at the time of the application for a writ or order for the production of the child the child is being brought up by another person, or is boarded out by the guardians of a poor law union, or by a parochial board in Scotland, the Court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person, or to the guardians of such poor law union, or to such parochial board, the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the Court to be just and reasonable having regard to all the circumstances of the case.

Court in making order to have regard to conduct of parent.

3. Where a parent has—

(*a*) abandoned or deserted his child; or

(*b*.) allowed his child to be brought up by another person at that person's expense, or by the guardians of a poor law union, for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties;

the Court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the Court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.

* See above, p. 73.

4. Upon any application by the parent for the production or custody of a child, if the Court is of opinion that the parent ought not to have the custody of the child and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the Court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up. Nothing in this Act contained shall interfere with or affect the power of the Court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice. Power to Court as to child's religious education.

5. For the purposes of this Act the expression "parent" of a child includes any person at law liable to maintain such a child or entitled to his custody, and "person" includes any school or institution. Definitions of "parent" and "person."

6. This Act may be cited as the Custody of Children Act, 1891. Short title.

APPENDIX N.*

REPORT OF SELECT COMMITTEE OF THE HOUSE OF COMMONS APPOINTED TO INQUIRE INTO THE OPERATION OF THE PRISONS ACT AND PRISON MINISTERS ACT, SO FAR AS RESPECTS THE RELIGIOUS INSTRUCTION PROVIDED FOR PRISONERS OTHER THAN THOSE BELONGING TO THE ESTABLISHED CHURCH.

YOUR Committee have taken evidence upon the working of the Prisons and Prison Ministers Acts, by which the appointment of prison ministers other than the chaplain of the Established Church is left to the discretion of the different prison authorities throughout the country. The result has been great inequality in the working of the system. In some prisons, a Roman Catholic prison minister is appointed with an adequate salary, and is placed on terms of equality with the Protestant chaplain; in others, a Roman Catholic prison minister is appointed with a salary, but is not permitted to assemble the Roman Catholic prisoners for Divine Service, being restricted to visiting them in their cells; in a third class, a Roman Catholic clergyman is permitted to visit the prisoners of his persuasion, and to assemble them for Divine Service, but is denied a salary; whilst in a fourth the visits of a Roman Catholic clergyman are only permitted at the express desire of a prisoner. This inequality is specially felt as a grievance by Roman Catholic prisoners, who cannot receive the ministrations of the chaplain of the Established Church without offending against the laws of their own religious persuasion.

Your Committee are of opinion that it is inexpedient and contrary to sound policy that such inequality should exist in the working of our prison system, and that it is desirable that prisoners of all religious persuasions should be, as far as possible, placed upon a footing of equality with regard to religious ministration and instruction. In this opinion they are supported by the evidence of Captain Du Cane, the present, Colonel Henderson, the late, Chairman of the Directors of Convict Prisons, and Sir Walter Crofton, as to the satisfactory working of the system in the Government prisons, where salaried Roman Catholic chaplains attend the prisoners of their own persuasion, and are recognised as officers of the prison. Your Committee recommend that this system should be made general throughout the country.

* See above, p. 103.

The complaints which have arisen have related almost exclusively to Roman Catholics. The cases in which Protestant prisoners have objected to join in Church of England worship, or to receive spiritual assistance from the chaplain, are very rare, and your Committee are of opinion that when such cases may occasionally occur, they may be satisfactorily met by the prison authorities under the powers which by Act of Parliament they at present possess.

Your Committee are, therefore, of opinion that prison authorities should be required by law to appoint Roman Catholic ministers in prisons in which Roman Catholic prisoners are confined; and that hereafter the Roman Catholic minister, when so appointed, shall be classed as one of the officers of the prison, and shall receive an adequate salary for his services.

Your Committee are of opinion that the prison minister so appointed should receive a salary according to the following scale:—

If the average number of prisoners belonging to the Roman Catholic religion during the last three years shall have been—

Number of Prisoners.	Minimum Salary.
	£.
More than 10, and less than 20	25
„ 20 „ 100	50
„ 100 „ 200	100
„ 200 „ 300	150
„ 300	200

Your Committee recommend that the Secretary of State should have power to transfer prisoners of any denomination, whose sentences exceed three months, from one prison to another, in order to give greater facilities for religious worship and instruction according to their special tenets.

30 *May* 1870.

APPENDIX O.*

Kemerton School Trust-Deed.†

This Indenture, made the twenty-fourth day of May, one thousand eight hundred and fifty-two, between the Rev. William Scott of Little Malvern in the county of Worcester, clerk, Ferdinand Eyston of Overbury in the same county, esquire, and Compton John Hanford of Wollas Hill in the same county, esquire, of the first part; the Right Reverend James Burgess of Clifton in the county of Gloucester, Doctor in Divinity and Roman Catholic Bishop, of the second part; and Charles Edward Hanford of Wollas Hill aforesaid, esquire, Charles Porter of the Mythe in the said county of Gloucester, esquire, Charles Tidmarsh of Kemerton in the said county, gentleman, Richard Tidmarsh of the same place, gentleman, George Eyston of Overbury in the said county of Worcester, gentleman, and John Surman of Conderton in the same county, yeoman, of the third part.

Whereas by Indenture of release dated the eighteenth day of June, one thousand eight hundred and forty-two, and made between Hannah Tidmarsh, widow, since deceased, of the first part, the said Charles Tidmarsh of the second part, Luke Barber, since deceased, and the said William Scott, Ferdinand Eyston, and Compton John Hanford, of the third part, and which indenture was duly enrolled in Her Majesty's High Court of Chancery on the fifth day of August one thousand eight hundred and forty-two, all that piece or parcel of meadow or pasture ground, being part of a certain orchard commonly called or known by the name of the Home Orchard, situate, lying, and being in the parish of Kemerton aforesaid, and then in the tenure or occupation of the said Charles Tidmarsh, and which said piece or parcel of meadow or pasture ground contains by estimation half an acre, be the same little more or less, and was bounded on the east by the road or lane called the Bite Lane, leading out of the high road from Evesham to Tewkesbury, up part of the village of Kemerton aforesaid, towards the stone-quarry on Burdon Hill, on the south by the said high road leading from Evesham to Tewkesbury aforesaid, on the west by other part of the said orchard called

* See above, p. 107.

† Reprinted from the Report of the Catholic Poor School Committee for 1852, p. 103.

the Home Orchard, and on the north by an orchard of Mr. Richard Baldwyn, and was then in the occupation of the said Charles Tidmarsh, with the appurtenances, were conveyed and assured by the said Hannah Tidmarsh and Charles Tidmarsh unto and to the use of the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford, their heirs and assigns for ever, upon trust and to the intent that the same piece or parcel of ground and other hereditaments might from time to time and at all times thereafter be devoted and appropriated as a site for a Church or Chapel for the celebration of divine service according to the rites and ceremonies of the Roman Catholic Church, and other buildings, for the accommodation of the persons for the time being appointed to and engaged in the service of the same Church or Chapel, and for any school (if thought necessary) to be erected and built, and at all times thereafter continued under the superintendence, regulation, and control of the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford, or other the Trustees or Trustee for the time being of the indenture now in recital, and the patronage thereof to be vested in them, or such other Trustees or Trustee for the time being, subject nevertheless to the rules and ordinances for the time being of the Roman Catholic Church; and in order thereto, but subject to such rules and ordinances as aforesaid, it should be lawful for the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford, or such other Trustees or Trustee for the time being as aforesaid, to remove or cause to be removed all or any of the buildings thereafter to be erected on the said piece or parcel of ground, or to convert or cause to be converted the same or any of them to such uses and in such manner as the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford, or such other Trustees or Trustee for the time being as aforesaid, should think proper, and likewise from time to time to alter or cause such alterations to be made in the laying out such piece or parcel of ground, and in the arrangement of any Church or Chapel and other buildings for the time being standing thereon, as to them the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford, or such other Trustees or Trustee, should seem meet, and also, if they, or such other Trustees or Trustee as aforesaid, should think proper, to permit the same piece or parcel of ground or any part thereof to be used as a Burial Ground for persons professing the Roman Catholic Religion, and to permit interments of the bodies of persons professing such religion to be made within such Church or Chapel; and by the said Indenture now in recital it was agreed and declared, that in case the Trustees and Trustee thereby appointed or to be appointed, and thereinafter mentioned, should depart this life, or refuse, decline, or become incapable to act in the trusts thereby in them reposed, then and so often as the same should happen it should be lawful for the surviving, continuing, or acting Trustees or Trustee for the time being, or the executors

or administrators of such last surviving, continuing, or acting Trustees as aforesaid, by any deed or deeds to be by them or him legally executed, to nominate and appoint any other person or persons to be a Trustee or Trustees in the place and stead of such Trustee or Trustees, so dying, refusing, declining, or becoming incapable to act as aforesaid, and that when and so often as any such new Trustees or Trustee should be nominated and appointed as aforesaid, all the said trust premises should be thereupon with all convenient speed conveyed and assured in such manner as that the same shall and may be legally and effectually vested in the newly appointed Trustees or Trustee jointly with such surviving, continuing, and acting Trustee or Trustees as aforesaid or solely, as occasion might require, but nevertheless upon and for the trusts, intents and purposes hereinbefore expressed and contained of and concerning the same, and that every such new Trustees or Trustee shall and may in all respects have the same powers and authorities as the Trustees or Trustee in whose place they or he shall be so appointed as aforesaid:

And whereas immediately after the date of the said last-mentioned indenture the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford erected on the site of the said piece or parcel of land a Roman Catholic Church called St. Benet's, together with a chaplain's house and offices thereto, and on the nineteenth day of February one thousand eight hundred and forty-three the said church was opened, and has ever since been used for divine service according to the rites of the Roman Catholic Church.

And whereas by an indenture dated the twenty-fourth day of October one thousand eight hundred and forty-four, and made between the said Hannah Tidmarsh of the first part, the said Charles Tidmarsh of the second part, and the said Luke Barber, William Scott, Ferdinand Eyston, and Compton John Hanford of the third part, and which indenture was duly enrolled in Her Majesty's High Court of Chancery on the eleventh day of November one thousand eight hundred and forty-four, all that piece or parcel of orchard, meadow, or pasture land, being part of a certain orchard commonly called or known by the name of the Home Orchard, situate, lying, and being in the parish of Kemerton in the county of Gloucester, and which said piece or parcel of meadow or pasture ground contained by estimation one acre, be the same little more or less, and was bounded on the east by the said new Catholic Church called St. Benet's, and the house, offices, and garden adjoining thereto, on the south by the high road leading from Evesham to Tewkesbury, on the west by the other part of the said orchard, and on the north by an orchard of Mr. Richard Baldwyn, as the same was then marked out on the west side thereof with stones, with the appurtenances, were conveyed and assured by the said Hannah Tidmarsh and Charles Tidmarsh unto and to the use of the said Luke Barber, William Scott,

Ferdinand Eyston, and Compton John Hanford, their heirs and assigns for ever, but nevertheless upon such and the same trusts, and to and for such and the same intents and purposes, and with, under, and subject to such and the same powers, provisoes, agreements and declarations, as were expressed of and concerning the piece or parcel of land, meadow, or pasture ground, and other hereditaments situate, lying, and being in Kemerton aforesaid, on part whereof the said Church or Chapel was then built, and which were comprised in and conveyed by the said indenture of the eighteenth day of June one thousand eight hundred and forty-two, or such and so many of them as were then subsisting undetermined or capable of taking effect:

And whereas the said Luke Barber departed this life on the twenty-ninth day of December one thousand eight hundred and fifty, leaving the said William Scott, Ferdinand Eyston, and Compton John Hanford him surviving:

And whereas the said William Scott, Ferdinand Eyston, and Compton John Hanford, in pursuance of the power so vested in them as such surviving Trustees as aforesaid, have set out and appropriated a part of the land comprised in and conveyed by the said indenture of the twenty-fourth day of October one thousand eight hundred and forty-four for a school and school-house for the education of children of poor Roman Catholics belonging to the spiritual cure of the said Church of St. Benet's, and in furtherance of such object have lately entered into a contract for the building and erection on a part of the piece of land above described of a school and school-house, with all necessary appurtenances, for the sum of two hundred and ninety pounds.

Recital of aid from Parliamentary grant having been promised.

And whereas the said parties hereto, or some of them, have applied to the Lords of the Committee of Council on Education for aid out of the Parliamentary Grant for Education in furtherance of the objects of their said Trust, and have received a promise of a certain sum of money to be paid to the said parties hereto of the second part, upon the fulfilment of the usual conditions:

Testatum.

Now this Indenture witnesseth, that in pursuance and for and in consideration of the premises, and with the approbation of the said Roman Catholic Bishop aforesaid, testified by his being a party to and sealing and delivering these presents, it is hereby covenanted, agreed, and declared by and between all the said parties hereto, that they the said William Scott, Ferdinand Eyston, and Compton John Hanford, and the survivors and survivor of them, and the heirs of such survivor, their or his assigns, and the Trustees or Trustee for the time being of these presents, do and shall stand and be seized and possessed of the piece or parcel of land and hereditaments hereinafter described as a site for a school and school-house and offices, as hereinbefore is mentioned, together with all buildings and erections now standing and being or to be hereafter erected and built thereon or on any part thereof, and which said land and hereditaments, as to dimensions, boundaries,

Parcels.

and abuttals, are more particularly delineated and described in the ground-plan drawn in the margin of these presents, with their and every of their rights, members, and appurtenances, upon the trusts, and to and for the ends, intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed or declared of and concerning the same (that is to say);

Upon trusts following, viz., to build school with master's house.

Upon trust, that they the said parties hereto of the first part, and the survivors and survivor of them, and the heirs and assigns of such survivor, and the Trustees and Trustee for the time being acting in the trusts of these presents, shall and do, with and out of the moneys now or which may hereafter be possessed by them or him for that purpose, and as soon as conveniently may be, erect, build, and finish upon the said piece of land or ground, or upon some part thereof, and from time to time and at all times hereafter when it shall be necessary for the due accomplishment of the trusts of these presents or any of them, repair, alter, enlarge, or rebuild a school-house or school-houses, school-room or school-rooms, together with a residence for a schoolmaster or schoolmistress, or both, and other offices, conveniences, and appurtenances, or without any of them respectively, as and in such manner as the Trustees or Trustee for the time being of these presents, with the consent and concurrence in all other respects of the management and superintendence of the school of the said Roman Catholic Bishop, or his successor for the time being, shall from time to time deem necessary or expedient:

To permit premises to be used for a Roman Catholic day school.

And upon further trust, that from time to time and at all times after the erection and completion of the said school-house or school-houses, or school-room or school-rooms, and residence or residences, with the appurtenances, to permit and suffer such part or parts of the same hereditaments and premises as is, are, or shall be designed for that purpose to be used as a residence or residences for the schoolmaster or schoolmasters, or schoolmistress or schoolmistresses, or both, as the case may be, and to permit and suffer such school-house and school-houses, school-room and school-rooms, with the appurtenances, to be used, occupied, and enjoyed as and for a Roman Catholic week-day school or schools for the religious and secular education of children and young persons, and, in such special cases in which it may be thought expedient, of adult persons of both sexes, in the usual branches of knowledge, and for no other purpose whatsoever, according to and in conformity with the principles of the Roman Catholic Church.

School to be open to inspection by Her Majesty's Inspectors.

And it is hereby declared that the said school shall be at all times open to the inspection of the inspector or inspectors of schools for the time being appointed in conformity with the Minute of the Committee of Her Majesty's Most Honourable Privy Council on Education, relating to conditions of aid to Roman Catholic Schools, and bearing date the eighteenth day of December one thousand eight hundred and forty-seven; provided always,

that such inspector or inspectors shall be in all things guided and limited in their duties by the instructions of the said Committee of Council to Her Majesty's Inspectors of Schools dated August one thousand eight hundred and forty, so far as such instructions are modified and limited by the said Minute of the eighteenth day of December one thousand eight hundred and forty-seven, and are applicable to Roman Catholic Schools, but no further or otherwise; and any departure from the terms of the said last-mentioned Minute on the part of Government shall not oblige the Committee of Management of the said school to submit to any inspection other than that mentioned in the said Minute of Council, or to refund the money advanced by Government, or any part thereof; and the said school and premises, and the funds and present endowments thereof, and such future endowments in respect whereof no other disposition shall be made by the donor thereof, shall be directed, controlled, governed, and managed in manner hereinafter specified that is to say, the priest or priests for the time being having care of the congregation assembling for religious worship at the Roman Catholic Church or Chapel of St. Benet's, in the parish of Kemerton aforesaid, under or by virtue of faculties duly received from or confirmed by the said Roman Catholic Bishop, or his successor for the time being, so long as such faculties shall be subsisting and unrevoked, shall have the management and superintendence of the religious instruction of all the scholars attending the said school, with power on Sundays to use or direct the premises to be used for the purposes of such religious instruction exclusively; but, in all other respects the management and superintendence of the school and premises, and of the funds and endowments thereof, and the selection, appointment, and dismissal of the schoolmaster and schoolmistress and their assistants (except as hereinafter is excepted), shall be vested in and exercised by a Committee consisting of such priest or priests for the time being holding faculties as aforesaid, and of six other persons being Roman Catholics, of whom the following, being the several persons parties hereto of the third part, shall be the first appointed; that is to say, Charles Edward Hanford, Charles Porter, Charles Tidmarsh, Richard Tidmarsh, George Eyston, and John Surman; and any vacancy which may occur in the number of persons last mentioned, by death, resignation, incapacity, or otherwise, shall be filled up by the election of a person (being a Roman Catholic), and the power of electing such person shall be vested in the remaining members of the said Committee, until the said Roman Catholic Bishop, or his successor for the time being, shall in writing direct that the election shall be by the contributors to the funds of the said school; and thereupon and thenceforth such election shall be vested in such of the contributors during the then current year, to the amount of ten shillings each at least to the funds of the said School, being Roman Catholics, as shall be present at the meeting duly convened for the purpose of the

By whom to be managed and superintended.

Managers, how to be supplied.

election, or, not being present thereat, shall vote by any paper or papers sent on or before the day of such meeting to the Chairman thereof, and signed by any such contributor, in which shall be named the person or persons whom such contributor shall desire to elect, and each of the contributors qualified to vote shall be entitled at every such election to give one vote in respect of each sum of ten shillings, so, however, that no person shall be entitled to give more than six votes in respect of any sum so contributed; provided nevertheless, that no default of election, nor any vacancy, shall prevent the other members of the Committee from acting until the vacancy shall be filled up; and the said Committee shall annually select one of the members thereof to act as Secretary, who shall keep minutes of the proceedings at the meetings thereof in a book which shall be provided for that purpose, and shall give due notice of all extraordinary meetings to each member of the Committee; the priest or senior priest for the time being of the Roman Catholic Church or Chapel of St. Benet's aforesaid shall be Chairman of all Meetings of the Committee when present thereat; and at any meetings from which he shall be absent the members attending the same shall appoint one of their number to be Chairman thereof; and all matters which shall be brought before such Meetings shall be decided by the majority of votes of the members attending the same and voting upon the question; and if upon any matters there shall be an equality of votes, the Chairman shall have a second, being the casting vote.

Secretary of Managers.

Chairman of Managers.

Vote of the majority binding.

Casting vote.

Managers, electors, and teachers, to be Roman Catholics.

And it is hereby declared, that no priest shall be or continue a member of the said Committee, or exercise any control or interference whatsoever in the said school, who does not hold faculties duly received from or confirmed by the Roman Catholic Bishop aforesaid or his successor for the time being subsisting and unrevoked; and that no person shall vote at any election for or be appointed or continue a member of the said Committee, or be appointed or continue a master or mistress in the said School, or be employed therein in any capacity whatsoever, who is not a Roman Catholic.

Powers assigned in matter of religion to spiritual authorities.

Provided always that the priest or senior priest for the time being of the Roman Catholic Church or Chapel of St. Benet's aforesaid shall have power to suspend any teacher from his office, or to exclude any book from use in the said School upon religious grounds, a written statement to that effect by the said priest or senior priest having first been laid before the Committee, and such suspension or exclusion shall endure until the decision of superior ecclesiastical authority thereon can with due diligence be obtained, and such decision shall, when obtained and laid before the Committee in writing under the hand of such superior ecclesiastic, be final and conclusive in the matter; and the Committee of Management for the time being is hereby expressly required to take all such steps as may be necessary for immediately carrying the said decision into complete effect: and it is hereby further declared, that if the

said superior ecclesiastical authority, upon any such reference as aforesaid, shall direct or award that any master, or mistress, or teacher in the said school shall be dismissed, such direction or award, when a copy thereof shall have been served upon the said master, mistress, or teacher personally, or by the same being left at his or her place of abode, or at the school aforesaid, addressed to the said master, mistress, or teacher, as the case may require, shall operate as a dismissal of the said master, mistress, or teacher, so as to prevent him or her thenceforth from having any interest in his or her office, or in the said School or premises under or by virtue of this deed, and so as to disqualify him or her from holding thenceforth any right or interest under this deed by virtue of his or her previous or any future appointment:

Managers may elect a committee of ladies to assist them.

And the Committee may from time to time, at a meeting to be held in the month of May in each year, elect and appoint a Committee of not more than six ladies, being Roman Catholics, to assist them in the visitation and management of the girls' and infant schools, which Ladies' Committee shall remain in office until the end of the current year.

Account and minute books to be kept

And it is hereby declared, that the said Trustees and Trustee for the time being as to all matters and things relating to the said trust estate and premises, and the said Committee of Management for the time being as to the School or Schools to be conducted on the said premises, and the matters and things relating thereto, shall respectively keep a book or books of account, in which from time to time shall be plainly and regularly entered an account of every receipt and disbursement by them, him, or any of them received or made, and also of all debts and credits due to and owing from or in respect of the said trust premises, or any part or parts thereof, or in respect of the School or Schools to be conducted thereupon, and in which book or books also an entry or entries of or reference shall be made to all other documents, articles, or matters and things necessary for the due and full explanation and understanding of the same book or books of account respectively; and shall also in like manner respectively keep a book or books of minutes, in which from time to time shall be plainly and regularly entered minutes of all Trust Meetings and Committee Meetings respectively, from time to time held under or by virtue of these presents, and of the resolutions passed, and of all proceedings, acts, and business had, taken, and done thereat respectively, and also of all documents, articles, matters, and things necessary for the due and full explanation and understanding of the same minutes, and of all other things done in and about the execution of the trusts of these presents; and shall from time to time and at all times hereafter, upon the request of the said Roman Catholic Bishop or his successor for the time being, produce and shew forth to him, and to any person or persons whom he shall from time to time in writing appoint to see the same, all and every such book and books of account and minutes, documents, articles, matters, and things,

To be shewn to the Roman Catholic Bishop on request.

and permit and suffer copies or abstracts of or extracts from them, or any of them, to be made and taken by the said Roman Catholic Bishop or his successor for the time being, or by any person or persons whom he shall from time to time appoint in manner aforesaid to make and take the same:

Accounts to be audited.

And the said books of account and minutes respectively, and all documents, articles, matters, and things relating in anywise to the said trust premises, or to the said School or Schools to be conducted thereupon, shall, at least once in every year, upon a day to be appointed by the said Roman Catholic Bishop or his successor for the time being, or with his concurrence, and oftener if he shall at any time desire, and shall give notice thereof in manner next hereinafter mentioned, be regularly examined and audited by the said Roman Catholic Bishop or his successor for the time being, or by some person or persons whom he shall from time to time in writing appoint, at a Meeting convened for that purpose; and of every such Audit Meeting fourteen days' notice in writing, specifying the time, place, and purpose of such meeting, shall and may be given, under the direction of the said Roman Catholic Bishop or his successor for the time being, either by himself or by any one or more of the said Trustees or Trustee for the time being, or by any one or more of the Members of the said Committee of Management, as the case may be, to each and every the other and others of them, the said Trustees and Trustee for the time being, or to each and every the other and others of the Members of the said Committee of Management, and either personally served upon him and them respectively, or left for or sent by the post to him and them at his and their most usual place and places of abode:

Notice of audit meetings.

Notice of other Trustee Meetings.

And it is hereby further declared, that of all other Meetings of the Trustees of these presents, and of all extraordinary Meetings of the said Committee of Management, seven days' notice in writing, specifying the time, place, and purpose or purposes of such Meeting, and signed by at least two of the Trustees for the time being, or by two of the Members of the said Committee of Management, as the case may be, or in either case by the said Roman Catholic Bishop or his successor for the time being, shall be given to the others of them and him the said Trustees or Committee of Management, and Roman Catholic Bishop or his successor for the time being, and either personally served upon him and them, or left for or sent by the post to him and them respectively at his and their most usual place and places of abode or business.

Notice valid though notice does not reach trustees in certain cases.

Provided always, and it is hereby declared, that no meeting held under or by virtue of these presents shall be invalid, or the resolutions thereof be void or impeached, by reason that any such notice or notices as aforesaid may not have reached any Trustee or Trustees for the time being, or any member of the said Committee of Management, who at the time of any such meeting may happen to be beyond sea, or who, or whose place or places of abode or business, shall not be known to and cannot reasonably be found

or discovered by the person or persons who is or are respectively as aforesaid authorised to give any such notice or notices as aforesaid:

Vote of the majority binding.

And it is hereby declared, that at any audit or other meeting as last aforesaid held under or by virtue of these presents or of the trust hereof, or of any of them, the votes of the persons present and entitled to vote, or the votes of a majority of them, shall decide any question or matter proposed at such meeting, and respecting which such vote shall be given; and in case the votes shall be equally divided, then the Chairman for the time being of such meeting shall give the casting vote, which casting vote he shall have in addition to the vote which he shall be entitled to in his character of Trustee, Committee-man, or otherwise:

Casting vote.

General proviso as to who shall be chairman of meetings.

Provided always, and it is hereby declared, that excepting where the contrary is in these presents expressly declared or provided for, the said Roman Catholic Bishop or his successor for the time being, or such person as he shall from time to time nominate and appoint in writing under his hand as his deputy, shall be the Chairman, and shall preside and have a vote at all meetings held under or by virtue of these presents: but in case the said Roman Catholic Bishop or his successor for the time being, or his deputy appointed as aforesaid shall at any time neglect or be unable to attend at any such meeting as aforesaid, or if the said Roman Catholic Bishop or his successor for the time being shall not attend at any such meeting, and shall neglect to appoint a deputy as aforesaid, then and in any or every of such cases it shall be lawful for the persons for the time being composing such meeting, and entitled to vote thereat, or for a majority of them, to elect from among themselves a Chairman to preside at such meeting; and every meeting so held, upon every such neglect or inability as aforesaid, shall be as valid and effectual as if the said Roman Catholic Bishop or his successor for the time being, or his deputy appointed as aforesaid, had been the Chairman and had presided thereat:

Power to trustees, with consent of Roman Catholic Bishop, to sell.

Provided always, and it is hereby agreed and declared, that it shall and may be lawful to and for the said persons parties hereto of the second part, or other the Trustees or Trustee for the time being of these presents, with the consent of the said Roman Catholic Bishop or his successor for the time being, such consent to be testified in writing under his hand, at any time or times hereafter, absolutely to sell and dispose of all and singular the said hereditaments and premises, or of such part or parts of the same respecting which such consent in writing as aforesaid shall be given, either by public auction or private contract, and either altogether or in parcels, at such time or times, price or prices, and with, under, and subject to such conditions or stipulations as to the said Trustees or Trustee for the time being shall seem expedient or reasonable, with power to them or him at any public auction of the said hereditaments and premises or any of them, or any part

thereof, to buy in the same, and also to vary or rescind any contract for the sale of the same or any part thereof, and to resell the hereditaments and premises which may from time to time be bought, or the contract for sale of which shall be rescinded, without responsibility for any loss to be occasioned thereby, and to convey and assure the hereditaments and premises so sold to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as he, she, or they shall direct; and the hereditaments and premises so sold, conveyed, and assured as aforesaid shall thenceforth be held and enjoyed for the purchaser or purchasers thereof, his, her, and their heirs and assigns, freed and absolutely discharged from these presents, and from the trusts hereby declared and every of them; and the Trustees and Trustee for the time being acting in the trusts of these presents shall apply the money which shall arise from any such sale as aforesaid, so far as the same will extend, to the discharge of all the incumbrances, liabilities, and responsibilities, whether personal or otherwise, lawfully contracted or occasioned by virtue of these presents, or in the due execution of the trusts thereof, or any of them, subject thereto, either for the purpose of building or purchasing a more conveniently or eligibly situated school-house or school-houses, or school-room or school-rooms, or a site for the same, in the place and stead of the said hereditaments and premises so sold and disposed of, to be settled upon the same trusts, and to and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisoes, and declarations, as are in and by these presents expressed and declared, or such of them as shall be then subsisting or capable of taking effect, or for or towards the promotion of religious and general educational purposes in the district or other ecclesiastical division in which the said premises are situated, upon the principles and in furtherance of the educational ends and designs of the Roman Catholic Church, as the said Trustees or the major part of them, with such consent as aforesaid, shall direct:

Appropriation of proceeds of sale.

Power to trustees, with consent of Roman Catholic Bishop, to let what is not required for school purposes at rack-rent, and to grant building leases.

Provided always, and it is hereby agreed and declared, that it shall be lawful for the Trustees and Trustee for the time being of these presents, with the consent of the said Roman Catholic Bishop or his successor for the time being (testified as aforesaid), from time to time to demise and lease all or any part or parts of the said hereditaments and premises which for the time being shall not be required for the purposes and trusts aforesaid, or any of them, to any person or persons, either for one year or from year to year, or for any term or number of years not exceeding twenty-one years: and also, with such consent as aforesaid, to demise all or any part or parts of the same hereditaments and premises which for the time being may not be required for the purposes and trusts aforesaid, or any of them, to any person or persons who shall be willing, and agree and covenant, to improve the same by erecting or building thereon any new house or houses, erections or building, or by repairing or rebuilding any messuages, tenements, erections or

building which now are or hereafter shall be standing on such part or parts of the said hereditaments and premises as are or shall not be required for the purposes and trusts aforesaid, or any of them, with powers or liberties to take down and use the materials of any such messuages, tenements, erections, and buildings then being thereon for the purpose of repairing, rebuilding, or new building as aforesaid, for any term of years not exceeding ninety-nine years; and also, with such consent as aforesaid, from time to time to accept a surrender of any such demise or lease as to the whole or any part of any of the premises comprised therein, and to make new demise or lease for the like estate or interest of the premises so surrendered, or any part thereof, so that every demise or lease to be made in the exercise of this power shall take effect in possession and not in reversion or remainder, and so that there shall be reserved on every such demise or lease the best and most improved yearly rent or rents which can be reasonably had or gotten for the same, to be incident to the immediate reversion of the said hereditaments and premises, without taking any fine, premium, or foregift, or any thing in the nature thereof for the same, beyond the improvements to be made by any lessee or lessees, and so as every lessee other than for one year or from year to year only do covenant for the due payment of the rent or rents thereby reserved in such demise or lease, and so as there shall be in every such demise or lease a clause in the nature of a condition of re-entry for non-payment of the rent or rents thereby reserved within twenty-one days next after the same shall become due, or for breach or non-performance of any of the covenants therein contained on the part of the lessee or lessees, his, her, or their heirs, executors, or administrators, and so as no clause be contained therein giving power to the lessee or lessees to commit waste, or exempting him or them from punishment for committing waste, except the powers and liberties to be inserted in such building or repairing demises or leases as aforesaid which it shall be considered necessary or expedient to be granted, and so that the respective lessees execute counterparts of their respective demises or leases, of the execution of which counterparts respectively a memorandum endorsed on the said demises or leases respectively, and signed by the persons or person for the time being exercising this power, shall be conclusive evidence as against all persons whomsoever claiming under these presents in opposition to any such demises or leases. Provided also, that the plans and specifications of all buildings to be erected under every such building or repairing lease shall, before such lease is executed, be approved by the Trustees or Trustee for the time being of these presents, and by the said Roman Catholic Bishop or his successor for the time being as aforesaid:

Provided always, and it is hereby agreed and declared, that no erection, alteration, rebuilding, or repair shall be made, or act done, or any trade, business, process, or manufacture carried on or

But no obstructions or annoyance to be allowed.

used in or upon any or any part of the premises which may be demised or leased in manner aforesaid, whether for one year or from year to year, or for any number of years not exceeding twenty-one years, or not exceeding ninety-nine years, respectively as aforesaid, so as to make, create, occasion, or be a nuisance, trouble, annoyance, hindrance, or obstruction to the execution and carrying on of the object and purposes of the trusts of these presents or any of them in the fullest, most convenient, and effectual manner; and that every lessee other than for one year, or from year to year only, shall covenant against the same:

Powers of sale and leasing not to be exercised without consent of Home Secretary in writing.

Provided nevertheless, that unless and until any money which shall or may have been advanced out of such Parliamentary Grant as aforesaid shall, with the consent of the Secretary of State for the Home Department, have been repaid to the Lords Commissioners of the Treasury for the time being, no sale, disposition, or lease of the said hereditaments and premises, or of any part or parts thereof, nor any application of the produce of any sale of the same or any part or parts thereof shall be made without the consent in writing of the Secretary of State aforesaid first had and obtained:

Receipts of trustees to be good discharges.

And it is hereby declared, that the receipt and receipts of the Trustees or Trustee for the time being of these presents shall, in all cases of payment made to them of any purchase or other money or moneys as such Trustees or Trustee as aforesaid, be a full discharge to the person or persons entitled to such receipt or receipts, his, her, and their heirs, executors, administrators, and assigns, for all moneys therein respectively expressed and acknowledged to have been received by such Trustees or Trustee as aforesaid; and in all cases, except for money paid and received in respect of any sale of the said hereditaments and premises, or any part or parts thereof as aforesaid, the receipt and receipts of any one or more of the Trustees for the time being of these presents shall be a full discharge to the person or persons entitled to such receipt or receipts, his, her and their heirs, executors, administrators, and assigns, for all moneys, except as aforesaid, therein respectively expressed and acknowledged to have been received:

Purchasers not bound to inquire into propriety of sale, or application of proceeds.

And it is hereby declared, that it shall not be incumbent upon any purchaser or purchasers of the said hereditaments and premises, or of any part or parts thereof respectively, to inquire into the necessity, expediency, or propriety of any sale or disposition of the same hereditaments and premises, or any part or parts thereof, made or proposed to be made by the said Trustees or Trustee for the time being as aforesaid; nor shall any such purchaser or purchasers, or any of them, or any other person or persons, his, her, or their heirs, executors, administrators, or assigns paying money to such Trustees or Trustee as aforesaid, be bound to see to the application, or be answerable or accountable for the loss, misapplication, or non-application, of such purchase or other money, or any part thereof, for which a receipt or receipts shall be respectively given as aforesaid.

Indemnity and reimbursement of trustees.

Provided always, and it is hereby agreed and declared, that the Trustees or Trustee for the time being of these presents shall not be answerable or accountable the one for the others or other of them, or for signing receipts for the sake of conformity, or by or for any involuntary loss, damage, or injury in the premises; and also that it shall be lawful to and for the Trustees or Trustee for the time being of these presents, out of the moneys which shall come to their respective hands by virtue of these presents, to deduct and retain and reimburse themselves and himself respectively, all costs, charges, and expenses to be sustained or expended in or about the execution of the trusts hereby created or declared, or in anywise relating thereto, to be computed as between solicitor and client.

Power to appoint new trustees.

Provided always, and it is hereby declared, that from time to time and at all times hereafter, when and so often as the Trustees for the time being of these presents shall by death, incapacity, or refusal to act in the trusts of these presents, or otherwise, be reduced below the number of three Trustees, then and in every such case the said Roman Catholic Bishop, or his successor for the time being, shall, at a meeting of the Trustees to be duly convened for that purpose in manner aforesaid,* nominate as many persons, being members of the Roman Catholic Church in the district or other ecclesiastical division in which the said hereditaments and premises happen for the time being to be situated, if a sufficient number of such persons can be then found willing to take upon themselves the burden and execution of the trusts hereby declared, and if not, then being members of the said Church in that and some neighbouring or other district or districts, division or divisions, as shall make up in the whole twice the number of Trustees to be appointed; and the old Trustees for the time being, or the major part of those present at such meeting, shall choose, elect, and appoint from amongst the persons nominated as aforesaid so many persons to be Trustees of the trust premises as shall, together with the surviving and continuing Trustees, if any, make up the original number of Trustees; and the hereditaments and premises for the time being subject to the trusts of these presents, and every part thereof, with the appurtenances, shall thereupon forthwith be legally and effectually conveyed and assured to and vested in such new and such surviving and continuing Trustees jointly, or in such new Trustees only, as the case may be, upon such and the same trusts, and to and for such and the same ends, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and agreements as are in and by these presents expressed, declared, contained, or referred to, or such of them as shall be then subsisting and capable of taking effect, and to and for no other use, trust, end, intent, or purpose whatsoever.

* This power of appointment does not provide for the case when all the trustees are dead.

Indemnity to purchasers against defective appointment of trustees.

Provided always that no purchaser or purchasers, lessee or lessees, or other person or persons whomsoever, shall be bound to inquire into or ascertain the due nomination or appointment of any person or persons as a Trustee or Trustees under this present power, nor be effected by express notice that he or they was or were not duly nominated and appointed a Trustee or Trustees, if the hereditaments and premises which for the time being remain subject to the trust of these presents shall have been or be actually transferred to or vested in such person or persons as such Trustee or Trustees.

Covenant that grantors have not incumbered.

And each of the said parties hereto of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said several persons parties hereto of the second part, their heirs, executors, administrators, and assigns, that they the said parties hereto of the first part respectively, have not, nor have nor hath at any time heretofore, made, done, omitted, committed, executed, or knowingly or willingly permitted or suffered any act, deed, matter, or thing whatsoever whereby, or by reason or means whereof, the hereditaments and premises aforesaid, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Enrolled in Her Majesty's High Court of Chancery the Nineteenth day of June in the year of our Lord One thousand eight hundred and fifty-two (being first duly stamped), according to the tenour of the Statute made for that purpose.

DEED OF REFERENCE.*

The following deed of reference incorporating the trusts of the Kemerton Deed was sanctioned for use in subsequent cases of schools applying to the Privy Council for building grants.

THIS INDENTURE, made the day of in the year of our Lord 185 between † of in the county of of the first part‡ of the second part and the

* Reprinted from a printed form supplied by the Poor School Committee. See also their Report for 1852, p. 60.

† The vendor.

‡ The trustees.

Right Reverend of in the county of
D.D. Roman Catholic Bishop of the third part
WHEREAS *

AND WHEREAS the several persons parties hereto of the second part have collected divers sums of money to be laid out in the purchase of land and hereditaments at or near aforesaid and in building thereon a Roman Catholic Poor School and School-house with such offices as may be necessary to be used therewith to be settled to the use and upon the Trusts hereinafter mentioned or referred to and they have accordingly agreed with the said † for the absolute purchase of the land and hereditaments hereinafter described and hereby granted and released with the appurtenances free from all incumbrances at the price of £
AND WHEREAS in furtherance of the objects aforesaid the parties hereto of the second part have applied to the Lords of the Committee of Council on Education for aid out of the Parliamentary Grant for Education and have received the promise of a certain sum of money to be paid upon the fulfilment of the usual conditions AND WHEREAS the trusts and provisions required by the said Committee of Council to be inserted in Deeds of Trust relating to Roman Catholic Poor Schools are fully set forth in an Indenture dated the 24th day of May 1852 and made between the Reverend William Scott and Ferdinand Eyston and Compton John Hanford Esquires of the first part the Right Reverend Thomas Burgess of Clifton Roman Catholic Bishop of the second part and Charles Edward Hanford Charles Porter Charles Tidmarsh Richard Tidmarsh George Eyston and John Surman Esquires of the third part being a Declaration of Trust of certain land and hereditaments thereby appropriated for the purpose of a Roman Catholic School at Kemerton in the county of Gloucester and which Indenture was prepared with the sanction of the said Committee of Council on Education and was enrolled in Her Majesty's High Court of Chancery on the 19th day of June 1852 AND WHEREAS to obviate the expense of repeating in detail the several trusts and provisions aforesaid it is proposed and intended by the general reference hereinafter contained to the said Indenture of the 24th day of May 1852 to extend and make applicable the like trusts and provisions to the hereditaments and premises herein described and conveyed as fully and effectually to all intents and purposes whatsoever as though the same were repeated herein and the said Committee of Council on Education have sanctioned the present form of deed NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement for purchase and in consideration of the sum of £ of lawful English money by the said parties hereto of the second part to the said ‡ paid out of the monies collected as aforesaid the receipt whereof the said

* Recite briefly the vendor's title. † Vendor. ‡ Ibid.

doth hereby acknowledge he the said * with the approbation of the said † as such Roman Catholic Bishop as aforesaid testified by his being a party to and sealing and delivering these presents doth grant bargain sell release and confirm unto the said parties hereto of the second part their heirs and assigns all that piece of land situate and being at in the parish of in the county of containing in depth ‡
and which said land and hereditaments are delineated in the plan thereof drawn in the margin of these presents together with all lights easements and appurtenances whatsoever to the said premises belonging or in anywise appertaining and all the estate and interest whatsoever both at law and in equity of him the said § therein and thereto To HAVE AND TO HOLD all and singular the said hereditaments and premises with their and every of their appurtenances unto and to the use of the said parties hereto of the second part their heirs and assigns for ever nevertheless UPON TRUST that they the said parties hereto of the second part and the survivors and survivor of them and the heirs and assigns of such survivor and the trustees and trustee for the time being acting in the trusts of these presents shall and do out of the monies now or hereafter possessed by them or him for that purpose and as soon as conveniently may be erect build and finish upon the land or ground hereby granted and conveyed and from time to time hereafter when necessary repair enlarge or rebuild a School-house with a residence for a schoolmaster or schoolmistress or both and such other offices as the Trustees or Trustee for the time being of these presents with the consent and concurrence of the said Roman Catholic Bishop or his successors shall from time to time deem necessary or expedient And after the completion of the said school-house and residence with the appurtenances to permit and suffer such part of the same premises as shall be designed for that purpose to be used as a residence for the schoolmaster or schoolmistress or both and to permit and suffer such school-house with the appurtenances to be used as and for a Roman Catholic week-day School or Schools for the religious and secular Education of children and young persons and in such special cases in which it may be thought expedient of adult persons of both sexes in the usual branches of knowledge according to and in conformity with the principles of the Roman Catholic Church and for no other purpose whatsoever AND IT IS HEREBY COVENANTED DECLARED AND AGREED by and between the said parties hereto of the second part with the approbation of the said Bishop testified as aforesaid that the said hereditaments and premises hereby conveyed shall be taken and held by them the said parties hereto of the second part and the survivors and

* Vendor. † Ibid.

‡ Here describe with accuracy and sufficient minuteness the hereditaments intended to be conveyed. § Vendor

survivor of them and the heirs of such survivor their or his assigns and the trustee or trustees for the time being acting in the trusts of these presents for the purpose aforesaid upon similar trusts and with under and subject to similar powers provisoes agreements and declarations in all respects as regards the maintenance and management of the said intended School School-house * and offices at aforesaid and the inspection of the said School by the Government Inspector to those expressed declared and contained in and by the said recited and enrolled Indenture of the 24th day of May 1852 in relation to the said Roman Catholic Poor School and premises at Kemerton aforesaid save only that the powers authorities and discretions in and by such last-mentioned Indenture vested in or reserved to and made exerciseable by the Roman Catholic Bishop party thereto and his successor for the time being over or with respect to the premises therein comprised shall for all the purposes of these presents be considered as vested in and be exercised and exerciseable by the said Roman Catholic Bishop party hereto and his successor for the time being and in like manner the several duties by the said Indenture of the 24th day of May 1852 appointed to be performed by and the powers thereby reserved to the Priest or Priests therein named or referred to shall for all the purposes of these presents be considered as vested in and be performed by the Priest or Priests officiating at the Roman Catholic Church at † aforesaid under or by virtue of faculties duly received from or confirmed by the said Roman Catholic Bishop party hereto or his successor for the time being and save also and it is hereby declared and agreed that the first Committee of Management of the said School and premises at aforesaid shall consist as to its lay members of the several persons following (that is to say) ‡

AND THE SAID § DOTH HEREBY FOR HIMSELF HIS HEIRS EXECUTORS AND ADMINISTRATORS COVENANT AND DECLARE with and to the said parties hereto of the second part their heirs and assigns that notwithstanding any act or default of him the said covenantor or any person under or through whom he claims or derives title he hath now in himself good right to grant convey and assure the said hereditaments and premises hereby granted and conveyed or otherwise assured in manner aforesaid and according to the true intent and meaning of these presents and that the same hereditaments and premises shall and may be entered upon and at all times hereafter be held and enjoyed by the said purchasers their heirs and assigns in manner aforesaid without any eviction interruption or disturbance from or by and free and clear of and from all incumbrances whatsoever

* This does not apparently include the power of sale, for which it may be necessary to obtain the sanction of the Court.

† Or "Chapel," as the case may be. ‡ Insert names of committee.

§ Vendor.

created or made by him the said covenantor or any person lawfully claiming or deriving title from through under or in trust for him and that he the said covenantor and his heirs and all and every persons and person claiming or deriving title from through under or in trust for him or them shall and will upon every request and at the expense of the said parties hereto of the second part make and perfect all such further assurances in the law as may be required by the said last-mentioned persons or the survivors or survivor of them or the heirs of such survivor his or their assigns for further and better conveying and assuring the said hereditaments and premises and every part thereof to the uses and upon and for the trusts intents and purposes and in manner aforesaid and also that the said covenantor his heirs and assigns shall and will from time to time when thereunto required by and at the expense in all things of them the said parties hereto of the second part or any or either of them or their or his assigns produce and show forth unto them or him or their or his nominee or nominees at any place within the limits of Great Britain all or any of the several deeds and muniments of title enumerated in the Schedule hereunder written and allow copies and extracts to be made and taken of and therefrom respectively.

In witness, &c.

The SCHEDULE above referred to

Taken and acknowledged by of the parties to this Deed this day of at before me a Master extraordinary in Chancery

APPENDIX P.*

ELEMENTARY EDUCATION ACT, 1891.

[54 & 55 Vict. Ch. 56.]

ARRANGEMENT OF SECTIONS.

An Act to make further provision for assisting Education in Public Elementary Schools in England and Wales.

[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:

Fee grant and conditions thereof.

1.—(1.) After the commencement of this Act, there shall be paid, out of moneys provided by Parliament, and at such times and in such manner as may be determined by regulations of the Education Department, a grant (in this Act called a fee grant) in aid of the cost of elementary education in England and Wales at the rate of ten shillings a year for each child of the number of children over three and under fifteen years of age in average attendance at any public elementary school in England and Wales (not being an evening school) the managers of which are willing to receive the same, and in which the Education Department are

* See above, p. 119.

satisfied that the regulations as to fees are in accordance with the conditions in this Act.

(2.) If in any case there is a failure to comply with any of the conditions in this Act, and the Education Department are satisfied that there was a reasonable excuse for the failure, the Department may pay the fee grant, but in that case shall, if the amount received from fees has exceeded the amount allowed by this Act, make a deduction from the fee grant equal to that excess.

(3.) For the purposes of section nineteen of the Elementary Education Act, 1876, the fee grant paid or payable to a school shall be reckoned as school pence to be met by the grant payable by the Education Department.

Limit of fees in schools receiving fee grant.

2.—(1.) In any school receiving the fee grant—

(*a.*) Where the average rate of fees received during the school year ended last before the first day of January one thousand eight hundred and ninety-one was not in excess of ten shillings a year for each child of the number of children in average attendance at the school; or

(*b.*) For which an annual parliamentary grant has not fallen due before the said first day of January;

no fee shall, except as by this Act provided, be charged for children over three and under fifteen years of age.

(2.) In any school receiving the fee grant where the said average rate was so in excess, the fees to be charged for children over three and under fifteen years of age shall not, except as by this Act provided, be such as to make the average rate of fees for all such children exceed for any school year the amount of the said excess.

Prohibition of charges in certain schools receiving fee grant.

3. In any school receiving the fee grant where the average rate charged and received in respect of fees and books, and for other purposes, during the school year ended last before the first day of January one thousand eight hundred and ninety-one, was not in excess of ten shillings a year for each child of the number of children in average attendance at the school, no charge of any kind shall be made for any child over three and under fifteen years of age.

Power to modify limit of fees in certain cases.

4.—(1.) Notwithstanding anything herein-before contained, the Education Department, if they are satisfied that sufficient public school accommodation, without payment of fees, has been provided for a school district, and that the charge of school fees or the increase of school fees for children over three and under fifteen years of age in any particular school receiving the fee grant is required owing to a change of population in the district, or will be for the educational benefit of the district, or any part of the district, may from time to time approve such charge or increase of fees in that school, provided that the ordinary fee for such children shall not exceed sixpence a week.

(2.) The Education Department shall report annually to Parliament all cases in which they have sanctioned or refused the imposition or augmentation of fees under this section, with a statement of the amount of fee permitted.

(3.) The Education Department may, if they think fit, make it an express condition of such approval that the amount received for any school year from the fees so charged or increased, or a specified portion of that amount, shall be taken in reduction of the fee grant which would otherwise have been payable for that school year, and in that case the fee grant shall be reduced accordingly.

Provision for free school accommodation.

5. If at any time after the expiration of one year from the commencement of this Act it is represented to the Education Department that there is in any school district, or any part of a school district, an insufficient amount of public school accommodation without payment of fees for children over three and under fifteen years of age, for whom such accommodation is desired, and the Education Department are satisfied after inquiry that such is the case, the Department shall direct the deficiency to be supplied in the manner provided by sections nine and ten of the Elementary Education Act, 1870, and every other section enabling them in that behalf, with respect to the supply of public school accommodation; and the expression "public school accommodation" in that Act shall include public school accommodation without payment of fees.

Provided that whenever and so long as any deficiency in such last-mentioned public school accommodation in any district is in course of being supplied with due despatch, no requisition or order shall be issued in that behalf by the Education Department.

Power to contribute from fee grant to common school fund.

6. The managers of two or more public elementary schools in the same or neighbouring school districts, not being schools provided by a school board, may pay the fee grant, or part thereof, received by each school into a common fund for distribution, as may be arranged by them, between or among such schools.

Provided that the fee grant received by each school in the first instance shall alone count as income of such school for the purposes of this Act and of section nineteen of the Elementary Education Act, 1876, and a contribution to a school from any such common fund shall not be reckoned as income of such school from other sources within the said section nineteen.

Grouping of schools.

7. Where the managers of two or more public elementary schools in the same or neighbouring school districts agree to associate and elect a committee for the schools, any surplus income on the accounts for the school year of any of the associated schools may be paid into a common fund, out of which contributions may be made to any of the other associated schools; but the contributions received by any such school shall not be counted as income from other sources for the purpose of section nineteen of the

Elementary Education Act, 1876, so that no addition to the public charge may result from this section taken in conjunction with the said section nineteen. Provided that no board school shall under this section be associated with any public elementary school other than a board school.

Explanation of 33 & 34 Vict. c. 75, s. 17.

8. Nothing in section seventeen of the Elementary Education Act, 1870, shall prevent a school board from admitting scholars to any school provided by the board without requiring any fee.

Provision for equality of treatment.

9. Nothing in this Act shall give any preference or advantage to any school on the ground that it is or is not provided by a school board.

Meaning of "school year" and "average attendance."

10. In this Act the expression "school year" shall mean a year or other period for which an annual parliamentary grant is for the time being paid or payable under the minutes of the Education Department; and the expression "average attendance" shall, for the purposes of the fee grant, mean average attendance calculated in accordance with the minutes in force at the commencement of this Act.

Repeal.

11. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement of Act.

12. This Act shall come into operation on the first day of September one thousand eight hundred and ninety-one.

Short title and construction.

13.—(1.) This Act may be cited as the Elementary Education Act, 1891, and shall be construed as one with the Elementary Education Acts, 1870 to 1890.

(2.) The Elementary Education Acts, 1870 to 1890, and this Act, may be cited collectively as the Elementary Education Acts, 1870 to 1891.

SCHEDULE.

Enactments repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75. .	The Elementary Education Act, 1870.	Section twenty-six.
39 & 40 Vict. c. 79. .	The Elementary Education Act, 1876.	Section eighteen.

APPENDIX Q.*

2 & 3 WILL. 4, c. 115.

An Act for the better securing the Charitable Donations and Bequests of His Majesty's Subjects in Great Britain professing the Roman Catholic Religion. [15*th August* 1832.]

WHEREAS by an Act passed in the first year of the reign of King *William* and Queen *Mary*, intituled *An Act for exempting His Majesty's Protestant Subjects dissenting from the Church of* England *from the Penalties of certain Laws*, and by certain subsequent statutes, the schools and places for religious worship, education, and charitable purposes of Protestant Dissenters are exempted from the operation of certain penal and disabling laws to which they were subject previously to the passing of the said recited Act of the first year of the reign of King *William* and Queen *Mary*: And whereas by certain Acts of the Parliament of *Scotland*, and particularly by an Act passed in the year One thousand seven hundred, intituled *An Act for preventing the Growth of Popery*, various penalties and disabilities were imposed upon persons professing the Roman Catholic religion in *Scotland*: And whereas, notwithstanding the provisions of various Acts passed for the relief of His Majesty's Roman Catholic subjects from disabling laws, doubts have been entertained whether it be lawful for His Majesty's subjects professing the Roman Catholic religion, in *Scotland* to acquire and hold in real estate the property necessary for religious worship, education, and charitable purposes: And whereas it is expedient to remove all doubts respecting the right of His Majesty's subjects professing the Roman Catholic religion in *England* and *Wales* to acquire and hold property necessary for religious worship, education, and charitable purposes: 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 passing of this Act His Majesty's subjects professing the Roman Catholic religion, in respect to their schools, places for religious worship, education, and charitable purposes, in *Great Britain* and the property held therewith, and the persons employed in or about the same, shall in respect thereof be subject to the same laws as the Protestant Dissenters are subject to in *England* in respect to their schools and places for religious worship, education, and charitable purposes, and not further or otherwise.

1 W. & M. c. 18.

1700, c. 3.

Roman Catholics to be subject to the same laws as Protestant Dissenters, with respect to schools and places of worship.

* See above, p. 133.

Roman Catholic schoolmasters, when required to take oath, to take that prescribed by 10 G. 4, c. 7.

II. Provided always, and be it further enacted, That in all cases in which schoolmasters or other persons employed in such schools or other places are, as a legal qualification for such employments, now required by law to take the Oath of Supremacy, or the Oath or Declaration against Transubstantiation and the Invocation of Saints and Sacrifice of the Mass, or to receive the Sacrament of our Lord's Supper, or, in *Scotland*, to subscribe the formula annexed to the aforesaid Act for preventing the growth of popery, any such schoolmaster or other master, professing himself a Roman Catholic, shall in lieu of the qualification aforesaid for holding such employment, take the oath contained in the statute passed in the tenth year of His late Majesty, intituled *An Act for the Relief of His Majesty's Roman Catholic Subjects*, and at the times and in manner in that Act mentioned.

Act not to affect pending suits.

III. Provided always, and be it further enacted, That nothing in this Act contained shall affect any suit actually pending or commenced, or any property now in litigation, discussion, or dispute, in any of His Majesty's courts of law or equity in *Great Britain*.

Nor to repeal provisions in 10 G. 4, c. 7, for suppression of certain religious societies.

IV. Provided always, and be it further enacted, That nothing in this Act contained shall be taken to repeal or in any way alter any provision of an Act passed in the tenth year of the reign of His late Majesty King *George* the Fourth, intituled *An Act for the Relief of His Majesty's Roman Catholic Subjects*, respecting the suppression or prohibition of the religious orders or societies of the Church of *Rome* bound by monastic or religious vows.

Property held for the purposes mentioned in this Act, in England and Wales, to be subject to the provisions of 9 G. 2, c. 36.

V. Provided always, and be it further enacted, That all property to be acquired or held for such purposes of religious worship, education, and charitable purposes, in *England* and *Wales*, shall be subject to the provisions of an Act passed in the ninth year of the reign of King *George* the Second intituled *An Act to restrain the Disposition of Lands whereby the same may become unalienable*, and to the same laws as the Protestant Dissenters are subject to in *England* in respect of the acquiring or holding of such property: Provided always, that nothing in this Act contained shall be taken to extend the provisions of the said last-recited Act to that part of *Great Britain* called *Scotland*.

APPENDIX R.*

24 & 25 Vict. c. 134.

An Act to amend the Law regarding Roman Catholic Charities.
[28th August, 1860.]

Whereas it is expedient that the laws concerning charities relating to or connected with the Roman Catholic religion in *England* or *Wales* should be amended in the particulars herein-after provided for: Be it enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, as follows:

Charities for lawful purposes not to be invalidated by the addition of unlawful trust, but the property may be apportioned, and the whole applied to lawful purposes.

1. No existing or future gift or disposition of real or personal estate upon any lawful charitable trust for the exclusive benefit of persons professing the Roman Catholic religion shall be invalidated by reason only that the same estate has been or shall be also subjected to any trust or provision deemed to be superstitious, or otherwise prohibited by the laws affecting persons professing the same religion, but in every such case it shall be lawful for the High Court of Chancery, or any Judge thereof sitting at Chambers, in exercise of the jurisdiction created by the Charitable Trusts Act, 1853, upon the application of Her Majesty's Attorney-General, or of any person authorized for this purpose by the certificate of the Board of Charity Commissioners for *England* and *Wales*, or for the said Board upon the application of the person or persons acting in the administration of such Real or personal estate, or of a majority of such persons, to apportion the same estate, or the annual income or benefit thereof, so that a proportion thereof, to be fixed by such Court or Judge, or by the said Board, as the case may require, may be exclusively subject to the lawful charitable trusts declared by the donor or settlor, and that the residue thereof may become subject to such lawful charitable trusts for the benefit of persons professing the Roman Catholic religion, to take effect in lieu of such superstitious or prohibited trusts as the said Court or Judge, or the said Board may consider under the circumstances to be most just; and also that it shall be lawful for the Court or Judge, or Board, making any such apportionment by the same or any other order or orders to establish any scheme for giving effect thereto, and to appoint

* See above, p. 147.

trustees for the administration of the several portions of such real and personal estate, according to the trusts established of the same proportions respectively, and to vest the estate to be so apportioned in the trustees so to be appointed.

No proceedings to be instituted as to dealings with Roman Catholic charities prior to 2 & 3 W. 4, c. 115.

II. No proceedings at law or in equity shall be brought or instituted on account or in respect of any dealings, transactions, matters, or things with or concerning any real or personal estate subject to any use, trust, gift, foundation, or disposition for any charity relating to or connected with the Roman Catholic religion which took place prior to the passing of the Act of the second and third years of the reign of King *William* the Fourth, Chapter One hundred and fifteen: Provided that nothing herein contained shall extend to sanction or exempt from such proceedings as aforesaid the fraudulent misapplication or conversion of any such real or personal estate to any private use or purpose not being charitable.

Certain deeds for Roman Catholic charities not to be void if enrolled within twelve months from passing of Act.

9 G. 2. c. 36.

9 G. 4. c. 85.

III. No deed or other assurance for and charity relating to or connected with the Roman Catholic religion made subsequently to the passing of the Act passed in the ninth year of the reign of King *George* the Second, intituled *An Act to restrain the disposition of Lands whereby the same become inalienable*, and before the passing of this Act, shall be void or voidable by reason of the same not having been made, perfected, or enrolled in the manner directed by the first-named Act, or otherwise, under the provisions of the said Act, if such deed or assurance has been or shall be, within twelve months after the passing of this Act, enrolled in the High Court of Chancery: Provided that every deed or assurance for any such charity as aforesaid coming within the provisions of the Act passed in the ninth year of the reign of King *George* the Fourth, intituled *An Act for remedying a defect in the titles of lands purchased for charitable purposes*, shall have the benefit thereof notwithstanding anything herein contained.

Expense of enrolment, how to be defrayed.

IV. The expense of the enrolment of any deed under the third section of this Act shall be defrayed out of the property subject to the charity to which the same may relate.

The trusts of charities in the absence of settlements may be ascertained from the usage.

V. Where any real or personal estate, subject to any use, trust, gift, foundation, or disposition for any charity relating to or connected with the Roman Catholic religion, shall have been applied upon any charitable trusts relating to or connected with the same religion during any continuous period of twenty years, but the original trusts of such property shall not be ascertained by means of any written document, the consistent usage of the last preceding twenty years, or of the last period of twenty years during which any consistent usage in the application of such property shall have prevailed, shall be deemed to afford conclusive evidence of the trusts on which the same property shall have been settled.

The Act not to prejudice

VI. Nothing in this Act contained shall extend to give effect to any use, trust, gift, foundation, or disposition heretofore made

which has been already avoided in any proceeding at law or in equity, or to prejudice any suit at law or in equity commenced before the passing of this Act, or to affect any property held or enjoyed beneficially by any person or persons at the time of the passing of this Act adversely to any such use, trust, gift, foundation, or disposition. past or pending proceedings or adverse possession.

VII. Nothing in this Act contained shall be taken to repeal or in any way alter any provisions of an Act passed in the tenth year of His late Majesty King *George* the Fourth, intituled *An Act for the relief of His Majesty's Roman Catholic subjects*, respecting the suppression or prohibition of the religious orders or societies of the Church of Rome bound by monastic or religious vows. Nothing in this Act to repeal provisions of 10 G. 4, c. 7.

VIII. In the construction of this Act, except where the context or other provisions of this Act shall require a different construction, the expression "charity" herein contained shall be construed to mean and include the same matters and things as the like expression means and includes in the "Charitable Trusts Act, 1853." Interpretation of "charity."

IX. This Act may for all purposes be cited as "The Roman Catholic Charities Act." Short title.

X. This Act shall be confined in its operation to *England* and *Wales*. Extent of Act.

APPENDIX S.*

54 & 55 Vict. c. 73.

An Act to amend the Mortmain and Charitable Uses Act, 1888, *and the Law relating to Mortmain and Charitable Uses.*

[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:

Short title.

1. This Act may be cited as the Mortmain and Charitable Uses Act, 1891.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of "land." 51 & 52 Vict. c. 42.

3. "Land" in the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land; and the definition of land contained in the Mortmain and Charitable Uses Act, 1888, is hereby repealed.

Meaning of "assurance."

4. In this Act the word "assurance" shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Land assured by will for a charitable purpose to be sold.

5. Land may be assured by will to or for the benefit of any charitable use, but, except as herein-after provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners.

Land after expiration of time limited for sale to be sold by order of charity commissioners.

6. So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said Commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land or removing such trustees and appointing others, and may provide by any such order for the payment of the proceeds of

* See above, p. 153.

sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same, respectively, to any orders of the said Commissioners made thereunder. 16 & 17 Vict. c. 137.

Personal estate by will directed to be laid out in land not to be so laid out.

7. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable uses shall, except as herein-after provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land.

Power to retain land in certain cases.

8. It shall be lawful for the High Court, or any judge thereof sitting at chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land.

Application of Act.

9. This Act shall only apply to the will of a testator dying after the passing of this Act.

Saving.

10. Nothing in this Act contained shall limit or affect the exemptions contained in Part Three of the Mortmain and Charitable Uses Act, 1888, or apply to any land or personal estate to be laid out in the purchase of land acquired under any assurance to which such exemptions or any of them apply, or shall exclude or impair any jurisdiction or authority which might otherwise be exercised by a court or judge of competent jurisdiction or by the Charity Commissioners.

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