HANDY BOOK OF PARISH LAW.

CHAPTER I.

OF THE PARISH AND PARISHIONERS.

THE parish is the integer both of our political and our ecclesiastical systems. But although in modern times it has been equally important in relation to either, there is no doubt that, in the first instance, it bore exclusive reference to the latter system. The earliest territorial divisions recognized by the church were, unquestionably, dioceses. The subsequent division of these into parishes was the result of the growth of population. When Christianity was struggling with surrounding heathenism, it is probable that the whole of the spiritual staff of a diocese was attached to the person of the bishop, and that its members were despatched by him, more as missionaries than as permanent ministers, into the different portions of his diocese. But as the numbers of believers increased, it became necessary that resident clergymen should be always at hand to administer to them the consolations of religion; and the natural result was, the division of the diocese into separate parishes, each with its own pastor. Moreover, the landlords, partly from motives of piety, and partly from a desire to strengthen the ties which bound their tenants to them, early began to

build churches upon their estates, and (with the sanction of the ecclesiastical authorities) to compel their dependants to pay their tithes to the support of these, instead of distributing them amongst the clergy of the diocese generally. The district whose tithes were thus appropriated to a particular church became a distinct parish. That parishes were, for the most part, thus formed, is clear from the fact that the boundaries of the oldest parishes are generally conterminous with those of one or more manors—probably originally belonging to the same lord. Considerable difference of opinion prevails amongst antiquaries as to the period at which the division of England into parishes took place. No doubt it was not a sudden, but a gradual process, extending over one, or perhaps two centuries. It appears, however, nearly certain that it was completed before the Norman Conquest, which occurred A.D. 1066. It must not, however, be supposed that the existing distribution of parishes ascends, in all cases, to that remote period. As population increased, the more extensive districts—particularly those embraced in the large towns—were divided and sub-divided, in order that their inhabitants might be brought more closely and immediately under clerical supervision. Besides those portions of the kingdom which thus became included in parishes, there were other lands which, either because they were in the hands of irreligious or careless owners, or were situate in forests or deserts,* or for other unsearchable reasons, were never united to any parish, and were, therefore, extra-parochial.

Although such places are still, in a certain sense,

* Blackstone's Commentaries, p. 114.

extra-parochial, they no longer enjoy the immunity from local burthens which they formerly possessed. For by the 20 Vict. c. 19, s. 1, it is enacted, that every place entered separately in the report of the Registrar-General on the Census of 1851, or which is there reported to be extra-parochial, and wherein no rate was then levied for the poor, shall for all the purposes of the assessment to the poor-rate, the relief of the poor, the county, police, or borough rates, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal votes, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name assigned to it in such report; and justices having jurisdiction over such place, or the greater part thereof, shall appoint overseers therein; and with respect to any other place being, or reputed to be, extra-parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor. By sect. 4, the quarter sessions or the recorder of a borough (if situate in a borough subject to his jurisdiction) may annex any extra-parochial place to an adjoining parish. And then it was provided by the 29 & 30 Vict. c. 113 (the Poor Law Amendment Act, 1866), that in all statutes, except there shall be something inconsistent therewith, the word "parish" shall signify a place for which a separate poor-rate is or can be made, or for which a separate overseer is or can be appointed. By these two Acts taken together, all extra-parochial places have now been completely absorbed into the parochial system of the country, at any rate, in so far as relates to the administration of the poor laws.

The boundaries of parishes generally depend upon ancient and immemorial custom. In most parishes in the country "perambulations" are made in Rogation week, for the purpose of keeping up the memory of those boundaries; and it is well established that parishioners are entitled to go over any man's land in their perambulations. But an entry into a particular house cannot be justified, or a custom to that effect supported, unless the house stands on the boundary-line, and it is necessary to enter it for the purpose of the perambulation.

When a dispute arises with respect to the boundaries of a parish, the proper mode to decide the question is, in general, by an action in one of the courts of common law. *For the purposes of rating, indeed,* the justices of the peace in sessions may decide * in which of two neighbouring parishes improved wastes and drained and improved marsh-lands lie. Under the General Enclosure Act (8 & 9 Vict. c. 118, s. 39), the enclosure commissioners may settle the boundaries of any parish or manor in which land is to be enclosed. And a similar power is given to the tithe commissioners (1 Vict. c. 69, s. 2), when the tithes of any parish or district are to be commuted. They can, however, only exercise it at the request of two-thirds in value of the owners of lands therein, signified in writing under their hands, or the hands of their agents, and signed at a parochial meeting called for the purpose.

We have hitherto spoken of "parishes" which bear that character both for *civil* and for *ecclesiastical* purposes. There is, however, a class of parishes generally

* Under the 17 Geo. II. c. 37.

called "new parishes," which has reference only to the latter. Under certain acts of parliament,* the ecclesiastical commissioners may, by an order in council, divide any parish into two or more separate parishes for all ecclesiastical purposes, and fix the respective proportion of tithes, glebe lands, and other endowments which are to remain to each. To this division the consent of the patron of the living, and of the bishop of the diocese, is requisite; and it can only take effect (except with the consent of the incumbent) at the next vacancy in the living. The incumbent of every new parish thus formed has the exclusive cure of souls within it, and the exclusive right of performing all ecclesiastical offices within its limits for the resident inhabitants thereof, who are thenceforth, for all ecclesiastical purposes, parishioners thereof.

We have just used the word parishioners. It may be as well to define its legal meaning. It includes "not only inhabitants of the parish, but persons who are occupiers of lands, who pay the several rates and duties, although they are not resident nor do contribute to the ornaments of the church."

"Inhabitants" includes all "housekeepers, though not rated to the poor, and also all persons who are not housekeepers; as, for instance, those who have gained a settlement, and by that means become inhabitants." Persons staying casually for a few weeks in a parish do not come under either of the terms "parishioner" or "inhabitant."

* 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; and 19 & 20 Vict c. 104.

CHAPTER II.

OF THE PARISH CHURCH AND CHURCHYARD.

THE freehold of the body or nave of the church is in the parson, and if any injury is done to it, he is the proper person to bring an action for damages. The "aisles" of the church frequently belong, either wholly or in part, to private families or individuals, or rather to particular estates within the parish, the owners of which, it is supposed, originally erected the aisle for the accommodation of themselves or their household. In support of such a claim, it is necessary not only that the right should have existed immemorially, but that the owners of the property, in respect of which it is claimed, should have repaired this part of the church from time to time. The freehold of the "chancel" is in the rector, who is charged with the responsibility of repairing it.

By the general law and of common right, all the pews in a parish church are the common property of the parish; they are for the use, in common, of the parishioners, who are all entitled to be seated orderly and conveniently, so as best to provide for the accommodation of all. They have indeed a claim to be seated according to their rank and station, but the churchwardens, who in this respect act as the officers of the bishop of the diocese, and subject to his control, are not, in providing for this, to overlook the claims of all the parishioners to be seated, if sittings

can be afforded them. Accordingly, they are bound, in particular, not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation with the rest, though they are not entitled to equal accommodation; supposing the seats not to be all equally convenient. And every parishioner has a right to a seat in the church without any payment, either for the purchase or as rent for the same; and if necessary, occupiers of pews, who are not parishioners (having no prescriptive right therein), may be put out by the churchwardens, to enable them to seat parishioners. And although such occupier has purchased the seat, and it was erected under a "faculty," * containing a clause permitting the party erecting the same to sell it, this will not avail against the common-law right of parishioners, for such permission in the faculty is illegal.

An individual may, however, acquire such an exclusive right to a pew, that neither the churchwardens nor the bishop of the diocese can oust him. This arises either from a "faculty" having been issued by a bishop of the diocese, granting the pew to him, or to his ancestors and their heirs, or to the owners of property now held by him in the parish. A long-continued enjoyment and repair of a pew by a man, his ancestors, or the holders of particular land, whether within or without the parish, will be held to presuppose a "faculty," and will confer a prescriptive right to the pew in question.

Whenever it is determined to pull down or enlarge the church, or to make a new distribution of the

* *i.e.* A permission or grant from the bishop.

pews and sittings in the church, the consent of the inhabitants, in vestry assembled, should be first obtained. This having been done, the churchwardens should obtain a faculty from the bishop,* empowering them to make the necessary alterations, and a commission is then issued to certain clergymen and laymen, authorizing them to allot the sittings. This they are generally directed to do in the following order: 1st, to those who had, before the issuing of the commission, seats by faculty or prescription, who are to have others allotted to them as near as may be to the site of their former seats; 2nd, to those who have contributed by their subscriptions to the building, enlargement, or repairs, or have actually occupied seats, though not by faculty or prescription, who are to have sittings according to the amount of their subscription, their quality, and the number of their families, but only so long as they continue to abide in the parish, and habitually resort to church; 3rd, to the rest of the inhabitants according to their station and requirements, and on the same tenure.

If any person erects any pew or seat in a church without a licence from the bishop, or without the con-

* One of the churchwardens of a parish, accompanied by another parishioner, acting upon a resolution of the vestry, but against the expressed prohibition of the rector, and without any lawful authority from the bishop of the diocese, broke open with a crowbar the principal door of the parish church, and with the assistance of some workmen proceeded to alter the position of the pulpit, and to pull down and re-arrange certain of the seats within the church. Held, that all who took part in these proceedings had been guilty of a grave ecclesiastical offence. *Dewdney* v. *Good*, 7 Jurist, N.S., 637.

sent of the minister or churchwardens, or in an inconvenient place, or if he make the sides too high, it may be pulled down by order from the bishop or his archdeacon, or by the churchwardens, or by the consent of the parson; but if any presume, without such authority, to cut or pull down any seat annexed to the church, the parson may have an action of trespass against the misdoer.

Under one of the acts to which we have referred for forming new parishes, it is provided, that if sufficient funds cannot otherwise be provided for the endowment of the church of such a parish, annual rents may (with the sanction of the ecclesiastical commissioners and of the bishop of the diocese) be taken for the pews or sittings. But half, at least, of the sittings must still be free, and it must be proved to the satisfaction of the commissioners that such seats are as advantageously situated as those for which a rent is taken.

With respect to the furnishing of the parish church, it is laid down that the parish is bound to provide everything which is necessary for the due and orderly celebration of the services of the church and the administration of the sacraments. Such are the following:—a communion-table, a pulpit, a reading-desk, a font, a chest for alms, a chalice, wine, bread, &c., a bible, prayer-book, and book of homilies; bells, ropes, and a bier for the dead; a table of the prohibited degrees of marriage, and another of the ten commandments.

Monuments, tomb-stones, &c., cannot be erected in a church or churchyard without the consent of the

parson and churchwardens; and also, strictly speaking, of the bishop of the diocese, whose jurisdiction in this matter is, however, rarely appealed to. He may, indeed, remove them if they are put up without his consent. After monuments have been erected they may be repaired; and the churchwardens are bound to consent to this.

If there be no custom that the parish or the owner of a particular estate should repair the chancel of the church, the responsibility of doing so rests at common law with the parson;* while the parishioners are charged with the duty of repairing the church. Since the abolition of compulsory church rates it is, however, a duty the fulfilment of which there is no means of enforcing. If it be necessary to enlarge the church, or to pull it down and rebuild it, the consent of a majority of the parishioners declared at a meeting duly summoned, and upon proper notice, must be obtained. The churchwardens must also take care to obtain the previous concurrence of the parish to a rate for the purpose—they cannot, after the alterations are made, call upon the parish to reimburse them.

The freehold of a church being in the incumbent, the custody of the key lawfully belongs to him. One consequence of this is, that unless he consents, the parishioners cannot, except on the occasion of divine worship, procure the ringing of the church bells.

By 24 & 25 Vict. c. 97, s. 1, and the 27 & 28 Vict. c. 47, any person unlawfully and maliciously setting

* In London there is a custom for the parishioners to repair the chancel as well as the nave.