

## **The law of burial, cremation and exhumation / by M.R.R. Davies.**

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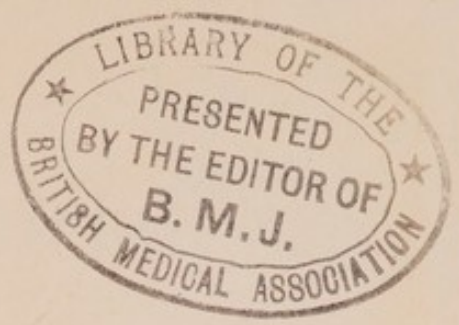
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# The Law of Burial, Cremation and Exhumation

by

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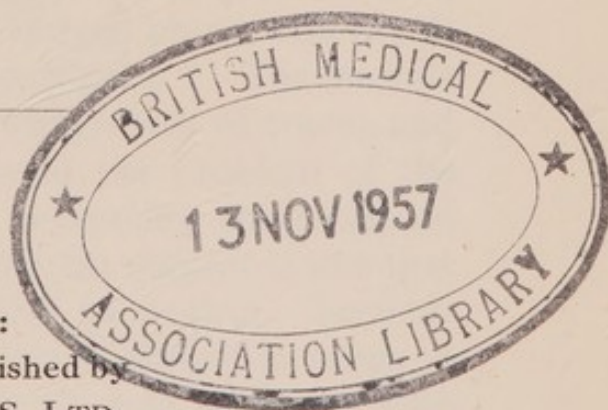
WITH A FOREWORD BY

**THE EARL OF VERULAM, M.A., F.R.H.S., J.P.,**

President of The Cremation Society

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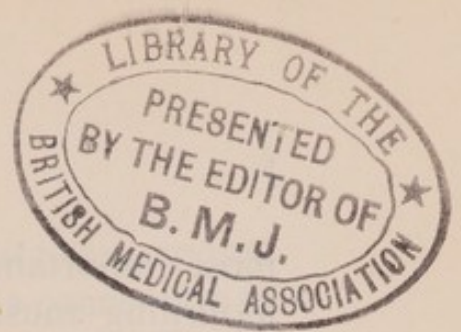
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## FOREWORD

BY

**The EARL OF VERULAM, M.A., F.R.H.S., J.P.**

*President of The Cremation Society.*

I WAS delighted to be asked by Dr. Davies to write a few words of introduction to this important book. In so doing, I am conscious that my approach must be that of an unworthy amateur in a subject to whose lucid exposition he has devoted so much care and erudition.

To the best of my knowledge this is the first book of its kind, the first to set out clearly, without bias or equivocation, the whole of that branch of the Law dealing with three kindred matters of varying complexity—Burial, Cremation and Exhumation—matters of rising importance to every local authority, and to countless individuals in specialist fields throughout Britain.

Why has there been this neglect of the subject hitherto, why should certain aspects be so hedged about with involved, and sometimes conflicting, legislation? The reasons may not be far to seek. First, the growth of towns and cities over the centuries has forced the problem of the disposal of the dead, with ever increasing emphasis, on each generation: at the same time the subject is one that it is natural to shun, to overlook, to neglect. Secondly, with the population of the United Kingdom today in excess of 50,000,000, with a death rate of more than 11 per 1,000 per annum, the problem's sheer magnitude has made much existing legislation outmoded, and even at certain points contrary to the public interest. Thirdly,



most important of all, the circumstances of death and mourning must always demand personal treatment of what is essentially a personal matter, one for which comprehensive legislation of a specific nature must always seem inadequate or excessive or ill-conceived.

The worthy disposal of the dead is, and should be, a public service of supreme importance to any community. It demands individual handling and sympathy, a sense of beauty and reverence, long-term planning, and above all smooth administration of a kind that must needs be ever present but largely unseen. The achievement of these high standards is the avowed aim of an increasing number of burial and cremation authorities, and of most funeral directors. In this book Dr. Davies has catalogued and commented upon the many aspects of the cumbersome legal framework within which the funeral director, the burial or cremation authority, and indeed the relatives themselves, must work.

The need for this clear statement is paramount. The very fact of the existence of this book may well (and it is so to be hoped) underline the need for amendment and consolidation of the Law relating to these matters, to the great good of the community. Such a reassessment is made the more necessary by the fact that the relative importance of earth burial and cremation is changing so rapidly in this country at the present time (Dr. Davies gives the figures on p. 159). This trend is of itself proof enough that cremation as such, after a long battle, has now been recognised by a large body of the people of Britain as being a simple, reverent, and effective method of disposal, despite Laws that still seem to favour the practice of inhumation.

Widespread cremation of the remains of our dead calls for simplifying legislation that, with all proper safeguards, makes cremation no more difficult to arrange than burial. In the interests of the relatives cremation means a simple

service in the shelter of a chapel, with no visit to an exposed graveside; it means less cost; it involves the conception of a purging fire and not of slow mouldering decay. To the Nation cremation brings: the saving for all time of valuable land; the creation of Gardens of Rest within cities, instead of serried acres of ill-kempt headstones on the periphery; a more hygienic but no less reverent method of disposal; perhaps, too, the gradual reopening of the traditional Churchyard, or God's Acre, as a fit place for the disposal of the ashes of the dead. "His ashes in a peaceful urn shall rest" said John Dryden some two centuries ago. "Can Flattery soothe the dull, cold ear of Death?" wrote Thomas Gray a few decades later, and so mocked for all time the irrelevant, unchristian, monumental absurdities of so many cemeteries and graveyards made hideous since his day.

In short, I commend this book warmly for what it is, a complete, clear, concise assessment, the first of its kind, of the Law as it affects the disposal of the dead in our country today.

VERULAM

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## PREFACE

THE principal purpose of this book is to give as clear and as comprehensive a statement as is reasonably possible of the important legal principles, provisions and cases underlying the bewildering complexities of the law relating to the disposal and disinterment of the dead.

This particular branch of the Laws of England is indeed unrivalled in its complexity of authorities, areas, enactments, procedures and personnel. For instance, more authorities are directly or indirectly concerned with burial and cremation than with any other modern public service; the relevant burial legislation is mainly to be found in nineteenth century statutes which have long since been in dire need of simplification, amendment and consolidation; and even cremation powers and procedures are still largely governed by a statute passed over fifty years ago at a time when public enlightenment on this subject was far from developed.

Since the number of deaths in this country now averages over half a million each year and we must all die sometime, the importance of the work of those responsible for the proper and dignified interment or cremation of the dead cannot be stressed too much or too often. At all stages between death and disposal, however, detailed and intricate rules of law must be carefully observed and scrupulously complied with. In this connection, it is hoped that the general content of this book will be of value to both public and private burial, cemetery and cremation authorities alike, as well as to their Superintendents, Registrars, Medical Referees, and staffs. It is further hoped that the numerous provisions and cases relating to the rights and responsibilities of all other persons associated with the disposal and commemoration of the dead will be of use, for example, to personal representatives and their professional advisers; Funeral Directors; Medical Practitioners and Medical Officers of Health; Registrars of



Births and Deaths; Coroners; Officiating Ministers of Religion, Incumbents and Diocesan Registrars; and, finally, to testators and those members of the Legal Profession who are entrusted with the intricate task of drafting valid gifts for the maintenance of monuments, memorials, graves and tombstones.

Part I deals with the Law relating to Burials, and in Chapter 1 the general position as to churchyard burials and burial grounds is first discussed before describing and classifying the more important modern statutory burial and cemetery authorities. Chapters 2 and 3 examine the powers and provisions regarding the establishment, management and use of burial grounds and cemeteries, first under the **Burial Acts, 1852 to 1906** and then under the **Cemeteries Clauses Act, 1847**, and the **Public Health (Interments) Act, 1879**. It is important to note that both burial grounds and cemeteries may be provided under the **Burial Acts, 1852 to 1906**, and not, as is sometimes thought, burial grounds only. The general rights and responsibilities of testators, executors and others after death, and the detailed position as to funeral arrangements and expenses, are considered in Chapter 4, while Chapters 5 and 6 deal with the obligations and procedure regarding the registration of deaths and still-births; the issue and transmission of certificates for disposal; the reporting of certain deaths to the Coroner; the detailed requirements as to disposal by burial; and the notification and registration of burials. In Chapter 7, gifts for the maintenance of monuments, memorials, graves and tombstones are classified in the light of the numerous cases governing their validity or otherwise, and the practical effect and significance of invalid conditions are examined with a view to avoiding similar pitfalls in the future.

Part II contains the Law relating to Cremation, and Chapter 8 first deals with the provision, management and development of Crematoria in Great Britain, and then gives a comprehensive account of modern cremation



procedure and practice under the **Cremation Acts, 1902 and 1952**, and the **Cremation Regulations, 1930**, as amended by the **Cremation Regulations, 1952**. There is also a detailed statement of cremation offences and penalties under both common and statute law.

Part III concerns the Law relating to Exhumation and Disused Burial Grounds, and in Chapter 9 exhumation powers, procedure and offences are dealt with fully before investigating the various restrictions imposed by the **Disused Burial Grounds Act, 1884**, and the general enabling provisions of the **Open Spaces Act, 1906**, and the **Town and Country Planning Acts, 1944 and 1947**. In view of the immense practical importance of the powers under these Planning Acts regarding the development and use of land formerly set aside for burial ground purposes, special attention has been paid to their relevant provisions as well as to the detailed requirements of the complementary **Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950**.

A special feature of this book is that, wherever possible, existing statutory provisions and enactments are set out in bold print. In this connection, however, it is important to note that a number of words or phrases in ordinary print have occasionally had to be inserted in order to give effect to subsequent developments and amendments and to preserve continuity. It follows, therefore, that as regards statutory provisions *all* words in bold print are absolutely authoritative and binding, whereas those in ordinary print, though important, do not possess the same degree of legal sovereignty.

Although this work is essentially concerned with the presentation of an accurate and up-to-date statement of the law as it exists today, it is nevertheless hoped that it will be of value to those who are seeking to improve not only the substance but also the arrangement of this



important branch of English Law. Appropriate recommendations for the modernisation, improvement and rationalisation of many of our laws relating to burial, cremation and exhumation must necessarily await the fullest possible investigation of the different problems involved, but there would appear to be no reason why the important task of consolidation should not be proceeded with as a matter of urgency.

My warmest thanks and appreciation are extended to the Right Honourable The Earl of Verulam, M.A., F.R.H.S., J.P., for kindly contributing his excellent and most valuable Foreword. I also wish to thank Professor C. J. Polson, M.D., F.R.C.P., Professor of Forensic Medicine in the University of Leeds; Mr. G. L. Haggan, M.A., B.C.L., Dean of the Faculty of Law in the University of Leeds, and Mr. Walter R. Pearson, N.D. Hort., F. Inst. B.C.A., Superintendent Registrar and Clerk to the Headingly-cum-Burley Burial Board and Cremation Authority, who have read and commented upon the whole of the book in proof form. Of the many others to whom I am indebted for much helpful information, encouragement and advice, I should like to mention particularly Mr. P. Herbert Jones, M.C., B.A., General Secretary of The Cremation Society, and Mr. Arthur C. McMillan, Secretary of the Federation of British Cremation Authorities.

Finally, I wish to record my sincere thanks to Messrs. Shaw & Sons Ltd., for kindly inviting me to write this book and for their most valuable help, co-operation and guidance in its publication.

M. R. R. DAVIES.

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THE UNIVERSITY OF LEEDS,  
*May, 1956.*

**The Law is stated as at May 1st, 1956.**

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### PART I

#### THE LAW RELATING TO BURIALS

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## THE LAW RELATING TO EXHUMATION AND DISUSED BURIAL GROUNDS

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PART I.

**The Law Relating to Burials.**



PART I

The Law Relating to Burials

29

## CHAPTER 1

# CHURCHYARD BURIALS AND BURIAL GROUNDS AND THE CLASSIFICATION OF BURIAL AND CEMETERY AUTHORITIES UNDER THE BURIAL ACTS, 1852 to 1906, AND THE PUBLIC HEALTH (INTER- MENTS) ACT, 1879.

### INTRODUCTORY.

Although the modern law relating to burials is largely statutory in source, and a little over one hundred years in origin, it is nevertheless of a most complicated nature. The need for a consolidating statute is immediately apparent, but in view of the complexities involved it may well be several years before a satisfactory Bill finally receives the Royal Assent.

For many centuries the burial of the dead was primarily a matter for the Church, but as many churchyard burial grounds eventually came to be used to capacity, special provision had to be made by Parliament for the purpose of providing additional facilities for the disposal of the dead. During the period between 1852 and 1906, no less than *fifteen* **Burial Acts** were passed and most of them are still in force. In addition, there were, *inter alia*, the **Cemeteries Clauses Act, 1847**, the **Public Health (Interments) Act, 1879**, and the **Cremation Act, 1902**. The intricate network of these statutes with their many overlapping and amending provisions has



produced a complexity of burial authorities, a complexity of burial areas and a complexity of burial laws. Since 1902, the only statute directly relating to burial or cremation has been the **Cremation Act, 1952**.

Before attempting to classify the various types of burial and cemetery authorities that exist today and their general powers and responsibilities, we must first examine the position at common law regarding churchyard burials and burial grounds and consider the relevant statutory powers for providing a new, or extending an existing, churchyard burial ground.

## 1.—GENERAL POSITION REGARDING BURIALS IN CHURCHYARDS.

### NATURE AND SCOPE OF THE RIGHT TO BE BURIED IN THE PARISH CHURCHYARD.

The common law right of all *parishioners* to be buried in the parish churchyard or burial ground without any leave from the incumbent was recognised in the early case of *Maidman v. Malpas*.<sup>1</sup>

Although this right extends to most persons, whether strictly parishioners or not, who actually die within the parish boundaries, it must be emphasised that there is no inherent right to be buried in any *particular part* of the churchyard. The exact place of burial was primarily a matter for the determination of the incumbent and churchwardens.<sup>2</sup> Thus, in *Fryer v. Johnson*,<sup>3</sup> it was **held** that a custom which purported to entitle the inhabitants of a parish to be buried as near as possible to their ancestors was bad.

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<sup>1</sup> (1794), 1 Hag. Con. 205.

<sup>2</sup> Now the parochial church council under the Parochial Church Council (Powers) Measure, 1921, s. 4.

<sup>3</sup> (1755), 2 Wils. 28.

## ENFORCEABILITY OF THE RIGHT OF BURIAL AT COMMON LAW.

If a clergyman absolutely refused to bury the body of a person brought for interment in the normal way, it was recognised in *Rex v. Coleridge*<sup>1</sup> that mandamus could be granted, but in *Ex parte Blackmore*<sup>2</sup> it was held that mandamus would not lie to compel a rector to bury the corpse of a parishioner in his own family vault, or in any other *particular part* of a churchyard.

## SUMMARY OF THE POSITION REGARDING THE COMMON LAW RIGHT OF BURIAL IN CHURCHYARDS.

In *Winstanley v. North Manchester Overseers*,<sup>3</sup> Lord Atkinson summarised the general common law position regarding churchyard burials as follows<sup>4</sup>:—

“The inhabitants of the parish have according to law a general right of sepulture in the churchyard, and that right, if denied, will be enforced by mandamus: *Ex parte Blackmore*<sup>5</sup>; *Rex v. Coleridge*<sup>6</sup>; but the right to select the place of interment is in the rector, and for the permission to be buried in any particular place or apparently in an unusual manner, such as an iron coffin, or in a vault, or with other unusual accompaniments, he can demand a fee. Again, he can permit persons who neither lived nor died in his parish, and were not his parishioners in any sense, to be buried in the churchyard, and can exact a fee beyond the usual burial fee for the privilege: *Nevill v. Bridger*.”<sup>7</sup>

Similarly, in *Preston Corporation v. Pyke*,<sup>8</sup> Clauson, J., observed<sup>9</sup>:—

“It is well settled that the right of sepulture of a parishioner in the burial ground of his parish is a right

<sup>1</sup> (1819), 2 B. & Ald. 806.

<sup>2</sup> (1830), 1 B. & Ad. 122.

<sup>3</sup> [1910] A.C. 7.

<sup>4</sup> *Ibid.*, at pp. 15 and 16.

<sup>5</sup> (1830), 1 B. & Ad. 122.

<sup>6</sup> (1819), 2 B. & Ald. 806.

<sup>7</sup> (1874), L.R. 9 Ex. 214.

<sup>8</sup> [1929] 2 Ch. 338.

<sup>9</sup> *Ibid.*, at p. 345.



to be buried in the burial ground, but this right carries with it no right (subject possibly to the operation, in particular cases, of faculties granted by the proper Ecclesiastical Court) of selection of the particular spot for the interment: *Ex parte Blackmore*.<sup>1</sup> No parishioner has, as such, any right to restrain or interfere with the burial of any other parishioner in the parish burial ground; indeed, it would seem that no parishioner, as such, has any right to interfere with the burial in the parish burial ground of a non-parishioner, save possibly if he can establish that such a burial causes actual inconvenience to the parishioners, that is, by unduly restricting the area available for interment: see *Littlewood v. Williams*.<sup>2</sup>

## ADDITIONAL POINTS AND CASES.

### No Right of Burial inside Churches.

There was no common law right to burial within the church itself. Burials in most churches are now prohibited by statute, (*see* Chapter 6, p. 111, *infra*) but where it is still allowed a Faculty authorising the interment must normally be obtained. Such a Faculty is also required before cremated remains can be lawfully interred in or under a parish church. (*Re Kerr*.<sup>3</sup>)

### Provision of Burial Ground for a New Parish.

Where a new parish was created *and* a churchyard burial ground provided for its inhabitants, the right of burial in the churchyard of any other parish was thereupon lost. (*Hughes v. Lloyd*.<sup>4</sup>)

### Consents required by Non-parishioners.

In the case of *non-parishioners*, the consent of both the incumbent and of the churchwardens<sup>5</sup> had to be obtained. (*Bardin v. Calcott*.<sup>6</sup>)

<sup>1</sup> (1830), 1 B. & Ad. 122.

<sup>2</sup> (1815), 6 Taunt. 277, 282.

<sup>3</sup> [1894] P. 284.

<sup>4</sup> (1888), 22 Q.B.D. 157. *See now*, the New Parishes Measure, 1943, ss. 3 (7) and 4 (4).

<sup>5</sup> Now the parochial church council under the Parochial Church Council (Powers) Measure, 1921, s. 4.

<sup>6</sup> (1789), 1 Hag. Con. 14.

### Use of Iron Coffins.

Although an iron coffin is not unlawful, an increased fee was permissible whenever such a coffin was used, because the right of burial only extends to burial in an ordinary manner in a wooden coffin.

(*Gilbert v. Buzzard*.<sup>1</sup>)

### Exclusive Rights of Burial.

An exclusive right of burial in a *particular* vault or part of a churchyard could be granted by a Faculty. In *Rugg v. Kingsmill*,<sup>2</sup> it was **held** that such a grant was a matter for the discretion of the appropriate Diocesan authority.

Exclusive rights of burial:—

- (i) may be granted to a non-parishioner;  
(*Re Sargent*<sup>3</sup>; *Kellett v. St. John's. Burscough Bridge*.<sup>4</sup>)
- (ii) may be assigned;  
(*Re Hendon Churchyard Case*.<sup>5</sup>)
- (iii) may be limited to a certain family “so long as they continue parishioners and inhabitants”, or to a person and “his heirs and family”.  
(*Magnay v. The Rector, Churchwardens and Parishioners of the United Parishes of St. Michael, Paternoster Royal, and of St. Martin Vintry*.<sup>6</sup>)
- (iv) cannot be granted by parol but must be by deed;  
(*Bryan v. Whistler*.<sup>7</sup>)

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<sup>1</sup> (1821), 2 Hag. Con. 333.

<sup>2</sup> (1868), L.R. 2 P.C. 59.

<sup>3</sup> (1890), 15 P.D. 168.

<sup>4</sup> (1916), 32 T.L.R. 571.

<sup>5</sup> (1910), 27 T.L.R. 1.

<sup>6</sup> (1827), 1 Hag. Ecc. 48.

<sup>7</sup> (1828), 8 B. & C. 288.



- (v) cannot be completely granted by the incumbent himself, without the title being confirmed by a Faculty; (*De Romana v. Roberts*.<sup>1</sup>)
- (vi) are not bound to be confirmed by the grant of a Faculty on the mere request of the incumbent. (*Rich v. Bushnell*.<sup>2</sup>)

### Position Regarding Monuments and Memorials.

Although parishioners have a common law right to be buried in the parish churchyard or burial ground,<sup>3</sup> it was respectively **held** in *Maidman v. Malpas*<sup>4</sup> and in *Bardin v. Calcott*<sup>5</sup> that a Faculty is normally required before a monument, memorial or tombstone may *properly* be erected *either* in a church *or* in a churchyard. A Faculty is a licence granted by the appropriate Diocesan authority. In *Hopper v. Davis*<sup>6</sup>, however, it was **held** that the consent of the *incumbent*<sup>7</sup> was sufficient provided a Faculty for the *removal* of the monument was not obtained. In this connection, it was **held** in *Ritchings v. Cordingley*<sup>8</sup> that monuments and ornaments, which have been illegally or irregularly placed in a church without a Faculty but by permission of the incumbent only, cannot be lawfully removed except under the sanction of the Ordinary or of some higher Diocesan authority.<sup>9</sup>

<sup>1</sup> [1906] P. 332.

<sup>2</sup> (1827), 4 Hag. Ecc. 164.

<sup>3</sup> See p. 4, *supra*.

<sup>4</sup> (1794), 1 Hag. Con. 205.

<sup>5</sup> (1789), 1 Hag. Con. 14.

<sup>6</sup> (1754), 1 Lee 640.

<sup>7</sup> The mere consent of the *churchwardens*, without the approval of the incumbent or of the Ordinary could never be sufficient: *Beckwith v. Harding* (1818), 1 B. & Ald. 508.

<sup>8</sup> (1868), L.R. 3 A. & E. 113.

<sup>9</sup> In the province of Canterbury an appeal against the refusal of a Faculty by the Chancellor of the appropriate Consistory Court lies to the Court of Arches, and in the province of York to the Chancery Court of York. In *Keet v. Smith* (1876), 1 P.D. 73, a judgment of the Arches Court of Canterbury was reversed by the Judicial Committee of the Privy Council.



In the more recent case of *Re Little Gaddesden Churchyard, Ex parte Cuthbertson*,<sup>1</sup> the Arches Court of Canterbury allowed an appeal from the Chancellor of the Consistory Court of the Diocese of St. Albans against the refusal of a Faculty for the erection of a white marble memorial in a churchyard in which about 41 per cent. of the memorials were already of that material.

Regarding the position of the incumbent, the Dean of the Arches (Sir Lewis Dibdin, D.C.L.) emphasised<sup>2</sup> that "the incumbent's so-called discretion does not exist. All that he can do, when anyone wishes to erect a memorial, if he does not consent, is to say that that person must obtain a faculty, and if that faculty is refused the matter cannot proceed. That is the power of the incumbent—he has no judicial discretion". The authority for the grant of a Faculty is given by the Chancellor of the Consistory Court of the Diocese concerned or "the Court to which appeals from his decision can be taken".<sup>3</sup>

As to the merits of the case, the Dean of the Arches said<sup>4</sup>:—

"The question is, Ought this memorial to be allowed? There is nothing objectionable in its shape, nor in the inscription; but it is of white marble, and that is much against modern taste and modern advice. It is true that a considerable portion of the memorials in this churchyard are of white marble, and some of them were authorized by the incumbent himself, although, as he said in one of his letters, he has always disliked white marble in the churchyard. On the other hand, it is fair to say that if in the future there is to be no white marble in the churchyard at Little Gaddesden the incumbent must make a beginning in his refusal to authorize it. But what will strike the ordinary man is,

<sup>1</sup> [1933] P. 150.

<sup>2</sup> *Ibid.*, at p. 152.

<sup>3</sup> See footnote 9, p. 8 above, and note that the position and procedure regarding the issue of Faculties by Ecclesiastical Courts are now governed by the Faculty Jurisdiction Measure, 1938, and by the Faculty Jurisdiction Rules, 1939, S.R. & O. 1939, No. 771.

<sup>4</sup> [1933] P. 150, at pp. 152 and 153.



that it is too late in the day now to exclude white marble from this churchyard, in which about 41 per cent. of the memorials are of that material. Possibly, if this was an attempt to introduce white marble into a churchyard where there had been none hitherto, the Court might hesitate at this date to authorize it. . . . It is impossible to leave out of one's mind the extreme transitoriness of taste in these matters. Who can say whether half a century hence white marble may not again be in fashion? . . .

I think that in cases like the present more respect should be shown to the wishes of a petitioner than has been shown here. Of course the law must not be broken; but there is no legal objection to this memorial. The objection taken is on the ground of taste, the taste of to-day. That is a smaller matter, and in my opinion it ought not to prevail against the wishes of the petitioner. The appeal, therefore, must be allowed, and a faculty must issue."

#### **Liability of Monumental Mason for the Defective Erection of a Tombstone in a Churchyard.**

Where a child, aged nine, was injured by the sudden fall of a tombstone whilst she was attending to the flowers on her grandmother's grave in a churchyard, the High Court **held** in *Brown v. Cotterill*<sup>1</sup> that the defendant firm of monumental masons were liable in negligence, since metal dowels had not been used to secure the tombstone when it was erected.

Lawrence, J., said<sup>2</sup>:—

"It appears to me that a monumental mason holds himself out as an expert in the erection of tombstones. Those who employ him have no knowledge of his art, and their approval or acceptance of his work has no reference to the method of erection. A churchyard is a place to which the public have access, and any monumental mason who erects a tombstone there so insecurely that it may fall at any moment of its own weight, as I find that this tombstone might have done and eventually did, must know that it may fall on some member of the public lawfully in the churchyard. There is no question

<sup>1</sup> (1934), 51 T.L.R. 21.

<sup>2</sup> *Ibid.*, at pp. 21 and 22.



in this case as to lapse of time or of repair, it being agreed that a tombstone properly erected ought to stand for at least thirty years without repair.

These facts appear to me to create a duty in the defendants to every member of the public who might lawfully enter the churchyard and be injured by the fall of the tombstone. The contract between the defendants and the persons who paid for the tombstone is irrelevant unless it were to be held, which I do not hold, that such persons were bound to examine and approve of the method of erection, in which case it might be that the defendants would not be liable. As I have said, persons who employ monumental masons to erect tombstones rely on the mason's skill and not on their own examination, and there is, therefore, nothing in their acceptance of the mason's work to exempt him from liability for the defective work which he has erected in a place to which the public have access."

## 2.—PROVISION OF CHURCHYARD BURIAL GROUNDS BY THE CHURCH COMMISSIONERS<sup>1</sup> UNDER THE NEW PARISHES MEASURE, 1943.

### POWER TO ACQUIRE LAND FOR BURIAL GROUND PURPOSES.

Part II<sup>2</sup> of the **New Parishes Measure, 1943**, contains a number of important general provisions applicable to all ecclesiastical districts.<sup>3</sup> The power of acquiring and holding land for burial ground purposes is set out in **section 13 (1) (c) and (e)**, which provides, *inter alia*, that the<sup>4</sup> **Commissioners may acquire by way of gift, devise**

<sup>1</sup> The functions and property of the former Ecclesiastical Commissioners were transferred to the Church Commissioners by s. 2 of the Church Commissioners Measure, 1947.

<sup>2</sup> Sections 13 to 26.

<sup>3</sup> Defined by s. 29 (1) of the New Parishes Measure, 1943, as including "any parish whether ancient or new, and any district formed under the Church Building Acts, 1818 to 1884, or the New Parishes Acts, 1843 to 1884, or this Measure, and any other ecclesiastical parish or district the minister whereof has a separate cure of souls".

<sup>4</sup> Throughout this book, it is important to note that whenever bold type is used, as here, in connection with a section or subsection of a statute, such type represents the *exact* wording of the authoritative statutory provision.



or purchase, and may hold without licence in mortmain and notwithstanding anything in the Mortmain and Charitable Uses Act, 1888, or any Act amending that Act . . . any land for providing a new or extending an existing churchyard burial ground; . . . and any land required for providing access to or improving the amenities of any such . . . burial ground.

Similarly, section 13 (2) empowers the Commissioners to accept gifts and bequests of money to be laid out in the purchase of land for any of the purposes mentioned above.

#### **VESTING OF LAND ACQUIRED FOR BURIAL GROUND PURPOSES IN THE INCUMBENT.**

By section 17 (b) of the New Parishes Measure, 1943, where land has been acquired by the Church Commissioners as a burial ground for a single ecclesiastical district,<sup>1</sup> the land shall on consecration of the burial ground vest in the incumbent<sup>2</sup> for the time being of the ecclesiastical district to which the burial ground belongs. Land acquired for providing access to or for improving the amenities of any churchyard or burial ground, vests in the incumbent for the time being in whom the churchyard or burial ground is vested.<sup>3</sup>

#### **POWER TO DECLARE LAND ACQUIRED FOR BURIAL PURPOSES IN ONE DISTRICT TO BE PART OF ANOTHER.**

In order to preserve an inhabitant's right of burial and to protect the incumbent's position as regards fees, section 21 of the New Parishes Measure, 1943, enacts:—

**Where the Commissioners acquire, by gift or purchase, for a new or additional burial ground land not within**

<sup>1</sup> For the position where land is acquired for the purpose of a burial ground for two or more ecclesiastical districts, see the New Parishes Measure, 1943, s. 20 (4) and (5), *infra*, p. 14.

<sup>2</sup> Defined by s. 29 (1) of the New Parishes Measure, 1943, as including "any minister with cure of souls".

<sup>3</sup> New Parishes Measure, 1943, s. 17 (d).



the limits of the ecclesiastical district or districts for the use of which the land has been acquired, it shall be lawful for the Commissioners in accepting the conveyance of the land to declare in the conveyance, or by any other instrument under their seal, that the land, after consecration thereof as a burial ground, shall be deemed for ecclesiastical purposes (including the purpose of determining the right of burial therein) to be part of the district or districts for the use of which it has been so acquired; and after consecration the land shall for such purposes as aforesaid be deemed to be part of the district or districts according to the said declaration.

#### POSITION WHERE ONE BURIAL GROUND IS PROVIDED FOR TWO OR MORE ECCLESIASTICAL DISTRICTS.

Section 20 of the New Parishes Measure, 1943, provides as follows:—

(1) Where land is acquired by the Commissioners for the purpose of a burial ground for two or more ecclesiastical districts, it shall be lawful for the Commissioners in accepting the conveyance of the land to direct by the conveyance or any other instrument under their seal that any chapel erected on the land for the performance of the burial service, and any lodge or other building erected thereon, and any access to or from the chapel or any such building shall be for the use of each of the districts.

(2) The incumbent of each such district shall, subject to such regulations as may be made by the bishop, be entitled to use the chapel for the performance of the burial service, and the like fees shall be chargeable as would have been chargeable had the burial service been performed in the church of the district and the burial taken place in a burial ground belonging solely to that district.



(3) If after the consecration of such a burial ground additional land adjoining or near to it is acquired by the Commissioners as a burial ground for any of the districts for which the original burial ground was acquired or for any other ecclesiastical district, the chapel may, subject to such regulations as aforesaid, be used for the performance of the burial service in the case of persons to be buried in the additional ground, and every such lodge or other building and approach or access as aforesaid may similarly be used.

(4) The freehold of the chapel on the consecration thereof and the freehold of any such lodge, buildings and means of access on the erection or construction thereof shall vest in the bishop:

Provided that such vesting shall not impose on the bishop any liabilities for the maintenance of any such chapel, lodge, building or means of access.

(5) The Commissioners may in any case, and shall, if different parts of the land were acquired by them for the use of several districts, apportion the burial ground exclusive of such chapel, lodge, buildings and means of access, amongst the several districts.

#### EXEMPTION FROM STAMP DUTY AND REQUIREMENTS AS TO FORMALITIES.

Under section 18 of the New Parishes Measure, 1943, no stamp duty is to be paid on any deed of gift, grant, contract, agreement, conveyance or other instrument made for any purpose, *inter alia*, connected with the provision of burial grounds by the Church Commissioners.

By section 19, no conveyance of land to the Commissioners shall be valid unless and until the assent of the Commissioners is testified by affixing thereto the seal of the Commissioners, but on the affixing of such seal the conveyance . . . shall have effect as from the date thereof.



### 3.—BURIAL AND CEMETERY AUTHORITIES UNDER THE BURIAL ACTS, 1852 to 1906.<sup>1</sup>

By section 11 of the Burial Act, 1900, the expression "burial authority" means any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act.

This definition is reproduced in section 2 of the Cremation Act, 1902,<sup>2</sup> and includes the following, but *not* private cemetery companies under the Cemeteries Clauses Act, 1847:—

- (i) Burial Boards and Joint Burial Boards;
- (ii) Borough Councils;
- (iii) Urban District Councils;
- (iv) Rural District Councils;
- (v) Parish Councils and Parish Meetings;
- (vi) Joint Committees;
- (vii) The Common Council of the City of London;  
and
- (viii) Metropolitan Borough Councils.

We must now consider each of the above types of burial authority in turn.

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<sup>1</sup> Of the fifteen enactments normally referred to as the Burial Acts, 1852 to 1906, the following thirteen statutes are still in force:—(1) Burial Act, 1852; (2) Burial Act, 1853; (3) Burial Act, 1854; (4) Burial Act, 1855; (5) City of London Burial Act, 1857; (6) Burial Act, 1857; (7) Burial Act, 1859; (8) Burial Act, 1860; (9) Burial Act, 1871; (10) Burial Laws Amendment Act, 1880; (11) Burial Boards (Contested Elections) Act, 1885; (12) Burial Act, 1900; and (13) Burial Act, 1906. Regarding the other two statutes, the Burial Act, 1862, was repealed by s. 309 of, and Part IV of the Eleventh Schedule to, the Local Government Act, 1933, and the Burial and Registration Acts (Doubts Removal) Act, 1881, was repealed by the Births and Deaths Registration Act, 1926, s. 13 and the Second Schedule.

<sup>2</sup> It should be observed, however, that s. 4 (1) of the Cremation Act, 1952, extends the meaning of the expression "burial authority" for the purposes of the Cremation Act, 1902, by providing that it shall be deemed to include any council *having power* to provide a cemetery under the Public Health (Interments) Act, 1879: see Chapter 8, p. 137, footnote 1, *infra*.



(i) **Burial Boards and Joint Burial Boards.**

Burial boards were originally established under **sections 10 and 11 of the Burial Act, 1852**, as extended to parishes outside the Metropolis by **section 7 of the Burial Act, 1853**. By these provisions, upon the requisition in writing of ten or more ratepayers of a parish in which the place or places of burial appeared to be insufficient or dangerous to health, the vestry could pass a resolution to the effect that a burial ground should be provided for the parish. Under **section 3 of the Burial Act, 1855**, however, a vestry could pass such a resolution without any requisition from the ratepayers. A copy of the resolution had to be sent to the Home Secretary and a burial board established on an elective basis to provide and maintain the burial ground in accordance with the Burial Acts.

The essentially *ad hoc* and parochial nature of these burial boards was materially affected by the legislative policy of the latter part of the nineteenth century whereby many purely *ad hoc* functions were transferred to local authorities with wider and more general administrative responsibilities.

The gradual transference of the powers and duties of the old *ad hoc* burial boards to modern omnibus local authorities has now resulted in most of the purely *parochial* boards being superseded.

It should be noted, however, that a number of important *ad hoc* Joint Burial Boards exist at the present time, but these are normally joint bodies specially constituted under **section 23 of the Burial Act, 1852**,<sup>1</sup> to provide a burial ground under the Burial Acts for the common use of the appointing authorities. By **section 24 of the Burial Act, 1852**,<sup>1</sup> a joint burial board is a body corporate with perpetual succession and a common seal, and it can sue and be sued in its corporate name.

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<sup>1</sup> As extended beyond the Metropolis by s. 7 of the Burial Act, 1853: see Chapter 2; p. 24, footnote 1, *infra*.



(ii) **Borough Councils.**

**Section 1 of the Burial Act, 1854**, provides that where it appears to Her Majesty in Council upon the petition of the council of any borough stating:—

- (1) that an Order in Council has been made for closing all or any of the burial grounds of one or more parishes wholly or partly within the borough; and
- (2) that there is difficulty or inconvenience in providing under the powers of the Burial Act, 1853, requisite places of burial for the inhabitants of the parish or parishes;

Her Majesty may, by Order in Council, order that powers shall be vested in the borough council for providing such places of burial. At least *one month* before the petition is considered by the Privy Council, notice must be given in the *London Gazette*, and in one of the newspapers usually circulating in the borough.

By **section 2 of the Burial Act, 1854**, the effect of the Order is to constitute the Borough Council a burial authority for the purpose of providing burial grounds under the Burial Acts.

As an alternative to a Borough Council adopting the Burial Acts by the above procedure, it may provide and maintain a cemetery under the provisions of the **Public Health (Interments) Act, 1879**.<sup>1</sup>

(iii) **Urban District Councils.**

An Urban District Council may petition under **section 4 of the Burial Act, 1857**, for an Order in Council constituting it a burial authority where:—

- (i) no burial board had been appointed for the district; and
- (ii) an Order in Council had previously been made for closing all or any of the burial grounds within the district.

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<sup>1</sup> See Chapter 3, pp. 47 to 66, *infra*.



Notice of the petition and of the time when it was to be considered by the Privy Council had to be published in both the *London Gazette* and in one of the newspapers usually circulating in the district at least *one month* before the petition was so considered.<sup>1</sup>

Alternatively, the district council may become a cemetery authority under the **Public Health (Interments) Act, 1879.**<sup>2</sup>

**(iv) Rural District Councils.**

A Rural District Council could never adopt the Burial Acts as such but it can provide and maintain a cemetery under the **Public Health (Interments) Act, 1879,**<sup>2</sup> and so become a burial authority within the meaning of **section 11 of the Burial Act, 1900,** above.

**(v) Parish Councils and Parish Meetings.**

By **section 7 (1) of the Local Government Act, 1894,** the Burial Acts could be adopted by the Parish Meeting of any rural parish, but under **section 7 (7),** where the Acts have been adopted for the whole or part of a rural parish and the parish has a Parish Council, the Parish Council is the authority for the execution of the Acts. If there is no Parish Council, the County Council can<sup>3</sup> authorise the Parish Meeting to become the burial authority itself or, alternatively, an *ad hoc* burial board could be appointed by the Parish Meeting. In cases where a burial board had been established for a parish

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<sup>1</sup> Burial Act, 1857, s. 4.

<sup>2</sup> See Chapter 3, pp. 47 to 66, *infra*.

<sup>3</sup> See the Local Government Act, 1933, s. 273, whereby on the application of the Parish Meeting of a rural parish not having a separate parish council, the County Council is empowered by Order to confer on the Parish Meeting any of the functions of a Parish Council. A copy of every such Order must be sent to the Minister of Housing and Local Government.



before the Local Government Act, 1894, all its powers, duties, and liabilities were transferred, by **section 7 (5)** of that Act, to the Parish Council when it came into office.

Neither Parish Meetings nor Parish Councils have any power to provide and maintain a cemetery or burial ground under the **Public Health (Interments) Act, 1879**.

**(vi) Joint Committees.**

Under **section 53 (2) of the Local Government Act, 1894**, if the area of a then existing burial board did not fall within one rural parish, the powers and duties of the board had to be exercised by a *Joint Committee* appointed by the councils of the rural parishes, urban districts and boroughs concerned. Many of these Joint Committees with the powers of the old burial boards still exist today and their constitution, proceedings, finances and borrowing powers are principally governed by the **Local Government (Joint Committees) Act, 1897**. Thus, any expenses incurred in carrying out the purposes of the Burial Acts must be defrayed, any money borrowed for those purposes must be borrowed, and any receipts arising from those purposes must be divided, by the appointing authorities in such proportion as they may agree upon, or, in default of agreement, as may be determined by the County Council, or, if one of the appointing authorities is a County Borough Council, by the Minister of Housing and Local Government.<sup>1</sup> Although the consent of the Minister is required for the borrowing of money by any of the councils, such consent is conclusive and no other consent is required.<sup>2</sup> Finally, if any difference arises regarding the constitution of the Joint Committee, it is to be determined by Order of the Minister.<sup>3</sup>

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<sup>1</sup> Local Government (Joint Committees) Act, 1897, s. 1 (1) (a).

<sup>2</sup> *Ibid.*, s. 1 (1) (b).

<sup>3</sup> *Ibid.*, s. 1 (2).



(vii) **The Common Council of the City of London.**

Under **section 43 of the Burial Act, 1852**, the Commissioners of Sewers of the City of London were authorised to exercise the functions of burial boards for all the parishes within the City, and by the **City of London Sewers Act, 1897**, their powers and duties under the Burial Acts were transferred to the Common Council of the City of London.

The **Public Health (Interments) Act, 1879**, does not apply to London.

(viii) **Metropolitan Borough Councils.**

The London (Adoptive Acts) Scheme, 1900,<sup>1</sup> made under the **London Government Act, 1899**, declared the extent to which the Burial Acts were in force within the Metropolis and the respective Metropolitan Borough Councils took over the functions of burial authorities. Any metropolitan borough in which the Acts were not in force throughout the whole borough could adopt them by petitioning for an Order in Council in the same manner as borough councils generally.<sup>2</sup>

By **section 9 of the Burial Act, 1852**, no new burial ground or cemetery (parochial or non-parochial) may be provided and used in the Metropolis without the previous approval of the Minister of Housing and Local Government or his predecessors.

As mentioned above, the **Public Health (Interments) Act, 1879**, does not apply to London.

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<sup>1</sup> This Scheme was confirmed by Order in Council dated August 7, 1900, S.R. & O. 1900, No. 601, and is still in force under the London Government Act, 1939, s. 207 (1), proviso (iv).

<sup>2</sup> London Government Act, 1899, s. 4 (4), and Article 4 (2) of the London (Adoptive Acts) Scheme, 1900. For the position regarding borough councils generally, see head (ii), p. 17, *supra*.



#### 4.—CEMETERY AUTHORITIES UNDER THE PUBLIC HEALTH (INTERMENTS) ACT, 1879.

The following local authorities may now provide and maintain a cemetery under the **Public Health (Interments) Act, 1879**:—

- (i) Borough Councils, other than Metropolitan Borough Councils;
- (ii) Urban District Councils; and
- (iii) Rural District Councils.<sup>1</sup>

As previously stated,<sup>2</sup> **section 11 of the Burial Act, 1900**, provides that any local authority maintaining a cemetery under the **Public Health (Interments) Act, 1879**, is a "burial authority" for the purposes of the **Burial Act, 1900**.

Since individual local authorities are empowered to appoint joint committees under **section 91 of the Local Government Act, 1933**, and joint boards under **section 6 of the Public Health Act, 1936**, a *Joint Cemetery Committee* or a *Joint Cemetery Board* may be established to provide and maintain a cemetery under the **Public Health (Interments) Act, 1879**, for the areas of the respective local authorities.

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<sup>1</sup> **Public Health (Interments) Act, 1879**, s. 1; **Public Health Act, 1875**, ss. 4, 6 and 9; **Local Government Act, 1894**, s. 21, and **Local Government Act, 1933**, ss. 1 and 32. The effect of these provisions is as follows:—Since s. 1 of the **Public Health (Interments) Act, 1879**, provided that the 1879 Act was to be construed as one with the **Public Health Act, 1875**, the expression "local authority" in the 1879 Act is to be defined with reference to s. 4 of the 1875 Act, *i.e.*, as meaning "urban sanitary authority and rural sanitary authority". By s. 6 of the 1875 Act, "urban sanitary authority" included authorities which under s. 1 of the **Local Government Act, 1933**, are now separately classed as (1) county boroughs (2) non-county boroughs and (3) urban districts. Rural sanitary districts formed under s. 9 of the 1875 Act became rural districts under s. 21 of the **Local Government Act, 1894**, and are now governed by rural district councils: **Local Government Act, 1933**, ss. 1 and 32. The **Public Health (Interments) Act, 1879**, accordingly applies to all three classes of modern local authorities as set out above, and s. 1 (2) of the consolidating **Public Health Act, 1936**, defines "local authority" as "the council of a borough, urban district or rural district".

<sup>2</sup> Page 15, *supra*.



Joint Cemetery Committees are appointed with the concurrence of a number of jointly interested local authorities and must be carefully distinguished from the type of Joint Committee<sup>1</sup> which had to be established for the purpose of the Burial Acts under **section 53 (2) of the Local Government Act, 1894**, in cases where the area of a then existing burial board did not fall within a single rural parish. Similarly, a Joint Cemetery Board established for the purposes of the **Public Health (Interments) Act, 1879**, must not be confused with a Joint Burial Board<sup>2</sup> created for the purpose of the Burial Acts under **section 23 of the Burial Act, 1852**.

By **section 3 of the Public Health (Interments) Act, 1879**, any local authority, joint committee or joint board, providing and maintaining a cemetery under that Act, are subject to the provisions of the **Cemeteries Clauses Act, 1847**, as modified by the **Burial Act, 1900**, and the **Burial Act, 1906**.<sup>3</sup>

## 5.—POWERS AND DUTIES OF BURIAL AND CEMETERY AUTHORITIES GENERALLY.

The general powers and duties of burial and cemetery authorities may be summarised as follows:—

- (1) To provide, manage and use burial grounds in accordance with the detailed provisions and requirements of the **Burial Acts, 1852 to 1906**.<sup>4</sup>
- (2) To provide and regulate cemeteries under the **Public Health (Interments) Act, 1879**, and the **Cemeteries Clauses Act, 1847**.<sup>5</sup>

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<sup>1</sup> See head (vi), p. 19, *supra*.

<sup>2</sup> See head (i), p. 16, *supra*.

<sup>3</sup> For details of these important provisions, see Chapter 3, pp. 50 to 55, *infra*.

<sup>4</sup> See Chapter 2, pp. 24 to 46, *infra*.

<sup>5</sup> See Chapter 3, pp. 47 to 66, *infra*.

- (3) To provide and maintain mortuaries and post-mortem rooms.<sup>1</sup>
- (4) To carry out the statutory requirements regarding the registration of burials<sup>2</sup> ; and
- (5) To establish and administer crematoria.<sup>3</sup>

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<sup>1</sup> See Chapter 2, pp. 39 and 40, *infra*.

<sup>2</sup> See Chapter 6, pp. 114 to 116, *infra*.

<sup>3</sup> See Chapter 8, pp. 137 to 161, *infra*.



## CHAPTER 2

### PROVISION, MANAGEMENT AND USE OF BURIAL GROUNDS AND CEMETERIES UNDER THE BURIAL ACTS, 1852 to 1906.

#### 1.—PROVISION OF BURIAL GROUNDS AND CEMETERIES UNDER THE BURIAL ACTS, 1852 TO 1906.

##### GENERAL DUTY TO PROVIDE A GROUND FOR BURIALS.

Under section 25 of the Burial Act, 1852,<sup>1</sup> a burial authority<sup>2</sup> must, with all convenient speed, proceed to provide a burial ground for its area, and to make arrangements for facilitating interments therein: and in providing such burial ground the authority shall have reference to the convenience of access thereto from the area for which the same is provided. The burial ground may be either within or without the limits of the area for which it is provided.

##### PROVISION OF MORE THAN ONE BURIAL GROUND.

If more than one burial ground is provided, section 3 of the Burial Act, 1857, requires the burial authority to obtain the approval of the Home Secretary.<sup>3</sup>

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<sup>1</sup> The Burial Act, 1852, initially applied to the Metropolis only, but, ss. 10 to 42 inclusive, s. 44, and ss. 49 to 52 were extended so as to operate outside London by s. 7 of the Burial Act, 1853.

<sup>2</sup> For the various types of burial authority for the purposes of the Burial Acts, see Chapter 1, pp. 15 to 20, *supra*.

<sup>3</sup> Most of the powers and duties of the Home Secretary under the Burial Acts were transferred to the Local Government Board (now the Minister of Housing and Local Government) by s. 4 of, and the First Schedule, to the Burial Act, 1900, but this particular function was *not* included in the transfer provisions.



## **PURCHASE OF AN EXISTING CEMETERY OR CONTRACTS FOR INTERMENTS THEREIN.**

To facilitate the provision of a burial ground, section 26 of the Burial Act, 1852,<sup>1</sup> empowers a burial authority to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein. As an alternative to providing a burial ground itself, the proviso to this section enables a burial authority to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the authority may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of the authority, if such a ground had been provided.

## **POWER TO CONTRACT FOR WORKS TO BE DONE.**

By section 31 of the Burial Act, 1852,<sup>1</sup> a burial authority may from time to time enter into any contract with any persons or companies for building any chapel or chapels . . . and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things which may be necessary.

## **GENERAL POSITION AS TO BURIAL RIGHTS AND THE DUTIES OF INCUMBENTS.**

Where a burial ground has been provided under the Burial Acts, section 32 of the Burial Act, 1852,<sup>1</sup> provides, *inter alia*, that it shall be deemed to be the burial ground of the parish or parishes for which it is provided, and every incumbent or minister of the parish or of each of the parishes (as the case may be) for which such burial

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<sup>1</sup> See footnote 1, p. 24, *supra*.



ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorise, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portions thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister . . . as if such burial ground were the burial ground of the respective parish of such incumbent or minister . . . and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish.<sup>1</sup>

#### RESTRICTION REGARDING BURIALS WITHIN ONE HUNDRED YARDS OF A DWELLING- HOUSE.

Section 9 of the Burial Act, 1855, provides that no ground not already<sup>2</sup> used as or appropriated for a cemetery shall be used for burials . . . within the distance of one hundred yards from any dwelling-house, without the *written consent* of the owner, lessee, and occupier of the dwelling-house.

Under section 1 of the Burial Act, 1906, the consent of the owner, lessee, and occupier of a dwelling-house to the use for burials of any ground used or appropriated for a burial ground or cemetery, mentioned in section 9 of the Burial Act, 1855, shall not be, and shall be deemed never to have been, required in any case where the dwelling-house is or was begun to be erected, or is or was erected or completed, after any part of that ground has or had been so used or appropriated.<sup>3</sup>

<sup>1</sup> For details of the right to be buried in the parish churchyard, see Chapter 1, pp. 4 to 6, *supra*.

<sup>2</sup> *I.e.* before 14th August, 1855.

<sup>3</sup> This provision was passed as a result of the decision of the Court of Appeal in *Godden v. Hythe Burial Board*, [1906] 2 Ch. 270, to the effect that the restriction in s. 9 of the Burial Act, 1855, extended to dwelling houses erected *after* a burial ground had been provided.



With regard to the above provisions, the following five points and decisions should be noted:—

**(1) Restriction relates to Interments only.**

In *Cowley (Lord) v. Byas*,<sup>1</sup> the Court of Appeal held that the only thing prohibited within the one hundred yards limit is the actual *burial* of the dead, and that there was accordingly nothing to prevent a cemetery or burial ground being within one hundred yards of a dwelling-house so long as that particular part of the cemetery or burial ground was not “**used for burials**”.

**(2) Measurement of the 100 yards limit.**

In *Wright v. Wallasey Local Board*,<sup>2</sup> it was held that the expression “dwelling-house” does *not* include the curtilage and, therefore, the distance of one hundred yards must be measured from the *walls* of the house itself and *not* from the boundary of the premises as a whole.

The measurement will be made “as the crow flies”.<sup>3</sup>

**(3) No Derogation from Grant.**

Where land had been sold for the purpose of a burial ground, it was held in *Toms v. Clacton Urban District Council*<sup>4</sup> that the vendor could not restrain the burial authority from using that part of the cemetery which was within a radius of one hundred yards of his dwelling-house.

**(4) Validity of Additional Restrictions Imposed under a Byelaw.**

A municipal byelaw which prohibited burials “in any existing cemetery now open for burials within the distance of 100 yards from any public building, place of worship, schoolroom, dwelling-house, public pathway,

<sup>1</sup> (1877), 5 Ch. D. 944.

<sup>2</sup> (1887), 18 Q.B.D. 783.

<sup>3</sup> *Lake v. Butler* (1855), 5 E. & B. 92; *Mouflet v. Cole* (1872), L.R. 8 Exch. 32. S. 34 of the Interpretation Act, 1889, now provides that in the measurement of any distance for the purpose of any Act passed after 30th August, 1889, the distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

<sup>4</sup> (1898), 78 L.T. 712.



street, road, or place within the borough" was held by the House of Lords to be good in *Slattery v. Naylor*,<sup>1</sup> even though its effect was to close a particular cemetery altogether and so deprive the appellant of the use and enjoyment of a previously purchased "permanent" burial place for his family.

**(5) Application of the 100 yards Restriction Imposed by Section 9 of the Burial Act, 1855.**

It seems that the above restriction regarding the use for burials of burial grounds within one hundred yards of a dwelling-house only applies to burial grounds or cemeteries which are provided *under* the Burial Acts, 1852 to 1906.<sup>2</sup> Thus, in *Clegg v. Metcalfe*<sup>3</sup> it was held that the restriction did *not* apply where a *churchyard* burial ground was extended under the **Consecration of Churchyards Act, 1867**.

**2.—MANAGEMENT AND USE OF  
BURIAL GROUNDS AND CEMETERIES  
UNDER THE BURIAL ACTS,  
1852 to 1906.**

**POSITION OF BURIAL ACTS AUTHORITIES  
GENERALLY.**

Under section 30 of the Burial Act, 1852,<sup>4</sup> a burial authority may lay out and embellish any burial ground provided by the authority in such manner as may be fitting and proper. By section 38,<sup>4</sup> the general management, regulation, and control of burial grounds provided under the Burial Acts vest in, and are exercisable by,

<sup>1</sup> (1888), 13 App. Cas. 446.

<sup>2</sup> For a similar restriction in the case of cemeteries to which the Cemeteries Clauses Act, 1847, apply, see s. 10 of that Act as amended by s. 2 of the Burial Act, 1906: *infra*, Chapter 3, p. 50. In the case of crematoria, a distance of two hundred yards is prescribed by s. 5 of the Cremation Act, 1902: *infra*, Chapter 8, p. 138.

<sup>3</sup> [1914] 1 Ch. 808. In this case, an earlier decision in *Greenwood v. Wadsworth* (1873), L.R. 16 Eq. 288, to the effect that the prohibition extended to privately established nonconformist burial grounds, was disapproved.

<sup>4</sup> See footnote 1, p. 24, *supra*.



the respective burial authority; **provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.**

In *Twyford v. Manchester Corporation*,<sup>1</sup> Romer, J., said<sup>2</sup> that the expression "monumental inscription" in **section 38 of the Burial Act, 1852**, "means an inscription appertaining to a memorial to the dead and it is the fitness of an inscription of that kind that the bishop has the right to determine".

It must be emphasised that as owners and occupiers of land, burial authorities are entitled to the ordinary rights and subject to the ordinary duties of landowners and occupiers generally. Thus, in *Crowhurst v. Amersham Burial Board*<sup>3</sup> the rule in *Rylands v. Fletcher*<sup>4</sup> was applied so as to render the burial authority liable in damages for the death of cattle which, while lawfully on adjacent land, had eaten the poisonous foliage from overhanging branches of yew trees planted by the defendants and growing in their burial ground. Similarly, in *Holy Law, South Broughton, Burial Board v. Failsworth Urban District Council*,<sup>5</sup> the burial authority, as owners of adjoining land, were **held** to be liable to contribute towards the expenses incurred in making up a road under the **Private Street Works Act, 1892**.

### **SALE OF EXCLUSIVE RIGHTS OF BURIAL AND OF RIGHTS TO CONSTRUCT VAULTS AND TO ERECT MONUMENTS.**

**Section 33 of the Burial Act, 1852**,<sup>6</sup> provides that any burial authority, **under such restrictions and conditions**

<sup>1</sup> [1946] Ch. 236.

<sup>2</sup> *Ibid.*, at p. 240.

<sup>3</sup> (1878), 39 L.T. 355.

<sup>4</sup> (1868), L.R. 3 H.L. 330.

<sup>5</sup> [1928] 1 K.B. 231.

<sup>6</sup> See footnote <sup>1</sup>, p. 24, *supra*.



as they think proper, may sell the exclusive right of burial,<sup>1</sup> either in perpetuity or for a limited period, in any part of any burial ground provided by such authority, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet or monumental inscription<sup>2</sup> in such burial ground.<sup>3</sup>

In *McGough v. Lancaster Burial Board*,<sup>4</sup> the Court of Appeal held that the sale of an "exclusive right of burial" under section 33 of the Burial Act, 1852, did not, and could not, include a right to place upon the grave a glass shade and wire frame over a wreath for protection purposes, and that in accordance with the general control vested in the burial authority by section 38 of the Act (*supra*, p. 28), the defendants were entitled to remove the shade and frame *without* the consent of the plaintiff who had previously purchased the exclusive burial right.

Similarly, in *Hoskins-Abrahall v. Paignton Urban District Council*,<sup>5</sup> the Court of Appeal held that the purchase of an exclusive right of burial together with the right to construct a vault did *not* entitle the grantee to perform private ceremonies within the vault, or to open

<sup>1</sup> Forms of *Grant of Exclusive Burial Rights*, with Duplicates to be retained by the Burial Authority, are printed to order by Shaw & Sons Ltd. To keep stamp duty to a minimum—see Chapter 3, p. 60, *infra*—an appropriate certificate of value is normally included. Forms of *Transfer of Exclusive Burial Rights* are printed under Cat. No. BUR 16A. Registers of such Grants and Transfers are printed under Cat. Nos. BUR 35 and BUR 16, respectively.

<sup>2</sup> Application Forms and Permission Notices are printed by Shaw & Sons Ltd., under Cat. Nos. BUR 36 and BUR 37, respectively. Registers of Memorials are printed under Cat. No. BUR 34.

<sup>3</sup> For the position in regard to the grant by Faculty of exclusive rights of burial in *churchyards*, see Chapter 1, pp. 7 and 8, *supra*.

<sup>4</sup> (1888), 21 Q.B.D. 323.

<sup>5</sup> [1929] 1 Ch. 375. It was immaterial for the purposes of this case that the burial ground had been provided by the local authority under s. 2 of the Public Health (Interments) Act, 1879, incorporating the Cemeteries Clauses Act, 1847. For details regarding the establishment of cemeteries under these provisions, see Chapter 3, pp. 47 to 51, *infra*.



or enter it for the purpose of depositing articles therein, without the consent of the burial authority.

Because the power of burial authorities to sell exclusive rights of burial must be construed in accordance with the precise wording of the relevant statutory provision,<sup>1</sup> it follows that the grantee of such a right does *not* acquire any freehold or other proprietary interest in any part of the burial ground. Thus, in *London Cemetery Co. v. Cundey*<sup>2</sup>, the cemetery authority were *not* entitled to an indemnity from the owner of an exclusive right of burial where a dead elm tree on the grave space in question had fallen down and caused damage to adjoining grave-stones and memorials. The fact that the owner of the right had previously been given notice of the dangerous condition of the tree was **held** to be irrelevant. It is important to note that *even if* responsibility for the tree had been expressly imposed upon the original purchaser of the right in the appropriate deed of grant, the Court considered that the burden of such a purely personal covenant could *not* have run so as to bind the present owner.

The exact terms of any grant of exclusive burial and other rights may well, of course, be of great importance; for example, in *Matthews v. Jeffrey*,<sup>3</sup> it was **held** that the title to an exclusive right of burial under a grant by deed of a grave space to a person "and his heirs" did not vest, on the death of the grantee, in all members of his family but only in his *heir*. Again, a grant of such a right will *not* include the right to construct a vault or to erect a monument or gravestone, but such *additional* rights may be purchased simultaneously and be included in the same deed of grant.<sup>4</sup>

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<sup>1</sup> *I.e.*, s. 33 of the Burial Act, 1852, above, or the Cemeteries Clauses Act, 1847, s.42, *infra*, p. 57, or the appropriate section in a Local Act.

<sup>2</sup> [1953] 2 All E.R. 257. The fact that the cemetery had been provided under a Local Act was immaterial for the purposes of this case.

<sup>3</sup> (1880), 6 Q.B.D. 290.

<sup>4</sup> *McGough v. Lancaster Burial Board* (1888), 21 Q.B.D. 323.



## POWER TO FIX PAYMENTS FOR INTERMENTS AND FOR VAULTS AND MONUMENTS.

Section 34 of the Burial Act, 1852,<sup>1</sup> empowers the burial authority to fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such authority as they shall think fit, and also the sums to be paid for the exclusive right of burial either in perpetuity or for a limited period, in any burial ground provided by such authority, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground. Provision is also made for the revision and alteration from time to time of the above fees, payments and sums; and it is finally enacted that a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground.

Under section 7 of the Burial Act, 1855, the approval of the Minister of Housing and Local Government<sup>2</sup> must

<sup>1</sup> See footnote 1, p. 24, *supra*.

<sup>2</sup> Originally, the approval required was that of one of Her Majesty's Principal Secretaries of State, *i.e.*, the Home Secretary, but the central authority for many of the purposes of the Burial Acts, 1852 to 1906, is now the Minister of Housing and Local Government. The relevant four stages and statutory provisions are as follows:—

- (i) S. 4 of the Burial Act, 1900, transferred the powers and duties of the Secretary of State under, or referred to in, the enactments in the First Schedule to that Act to the *Local Government Board*.
- (ii) The functions of the Local Government Board were transferred to the *Minister of Health* by the Ministry of Health Act, 1919, s. 3 (1) (a), s. 3 (5) and the First Schedule.
- (iii) By the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951, S.I. 1951 No. 142, the functions of the Minister of Health under the Burial Acts were transferred to the *Minister of Local Government and Planning*.
- (iv) Under the Minister of Local Government and Planning (Change of Style and Title) Order, 1951, S.I. 1951, No. 1900, the Minister of Local Government and Planning became the *Minister of Housing and Local Government*.



now be obtained in the case of any newly established Table of Charges, and **no fees, payments, or sums shall be altered or varied without such approval.**

As regards the sums which may lawfully be charged in respect of "monumental inscriptions", it was **held** in *Twyford v. Manchester Corporation*<sup>1</sup> that the burial authority had no right to charge any fees for their permission to *re-cut, re-print or re-gild* inscriptions, since their powers were limited to imposing charges in respect of the *original cutting* of the inscription only. The operative words in **section 34 of the Burial Act, 1852**, above, were "monumental inscription", which were held to mean an inscription on a monument and *not* an inscribed monument.

## CONSECRATION OF BURIAL GROUNDS AND CEMETERIES.

### Application to the Bishop for Consecration.

Section 1 of the Burial Act, 1900, provides:—

(1) The burial authority<sup>2</sup> for any burial ground may, if they think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by the Secretary of State.<sup>3</sup>

(2) If the burial authority do not make the application within a reasonable time after a request in that behalf and the Secretary of State is satisfied that a reasonable number of persons for whom, or within the area for which, the burial ground is provided, desire that a portion of it be consecrated, and that the consecration fees<sup>4</sup> have been paid or reasonably secured, the Secretary

<sup>1</sup> [1946] 1 Ch. 236.

<sup>2</sup> Defined by s. 11 of the Burial Act, 1900, as "any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act". See Chapter 1, p. 15, *supra*.

<sup>3</sup> *I.e.*, the Home Secretary. This particular power has *not* been transferred to the Minister of Housing and Local Government.

<sup>4</sup> Under the Table of Ecclesiastical Fees and Payments, S.R. & O. 1908, No. 879, the fees normally amount to ten guineas.



of State may make the application in respect of an approved portion of the burial ground, and the bishop may consecrate accordingly, and it shall be the duty of the burial authority to make such arrangements as may be necessary for the consecration.

In *Williams v. Briton Ferry Burial Board*<sup>1</sup> two parts of a burial ground were consecrated, one with, and one without, the approval of the Secretary of State. The unapproved part had been included in error but since all the legal requirements and formalities as to consecration were complied with, it was **held** that it had become and must remain consecrated ground, notwithstanding the want of approval by the Secretary of State.

#### **Procedure if the Bishop refuses to Consecrate.**

By section 12 of the Burial Act, 1857:—

If, upon application in writing by any burial authority to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the . . . Church of England . . . the said bishop shall refuse to consecrate the same, it shall be lawful for such burial authority to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the said archbishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the authority shall be bound to put the said ground in a fit and proper condition; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid; and if after such communication the said bishop shall not within one calendar month consecrate the said burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the . . . Church of England . . . , and the licence of the said archbishop

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<sup>1</sup> [1905] 2 K.B. 565.



so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated.

### Demarcation of the Consecrated and Unconsecrated Portions<sup>1</sup> of Burial Grounds and Cemeteries.

Section 11 of the Burial Act, 1857, provides that it shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the Burial Acts, 1852 to 1906. Where, however, there is no wall or fence, the burial authority must place, and from time to time repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.<sup>2</sup>

In *R. v. Tiverton Burial Board*,<sup>3</sup> a division twelve inches high was held to be sufficient for demarcation purposes.

### Use of Burial Ground Prior to Consecration.

As soon as the Home Secretary has certified that the necessary requirements regarding the provision of a burial ground under the Burial Acts have been complied with, section 13 of the Burial Act, 1857, provides that it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person as any such incumbent may authorise, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.<sup>4</sup>

<sup>1</sup> Registers of Public Graves in Consecrated and in Unconsecrated Ground are printed by Shaw & Sons Ltd., under Cat. Nos. BUR 12 and BUR 13, respectively. Similar Registers in respect of Private Graves are printed under Cat. Nos. BUR 14 and BUR 15, respectively.

<sup>2</sup> Burial Act, 1857, s. 11, proviso.

<sup>3</sup> (1858), 31 L.T. (O.S.) 233.

<sup>4</sup> For the general right to use the burial service of the Church of England in *unconsecrated* ground without censure or penalty, see the Burial Laws Amendment Act. 1880, s. 12, *infra*, Chapter 6, p. 107.



**Protection of Unconsecrated Ground Set Apart for Burials.**

Unconsecrated ground which is maintained by a burial authority and set apart for the purposes of burial shall not be applied to any other purpose except by leave of the Minister of Housing and Local Government.<sup>1</sup>

(Burial Act, 1900, section 6.)

**FORMAL ALLOTMENT OF PART OF THE UNCONSECRATED PORTION OF A BURIAL GROUND OR CEMETERY.**

In the case of burial grounds provided under the Burial Acts, 1852 to 1906, **section 7 of the Burial Act, 1853**, requires any allotment of the unconsecrated parts to be **in such manner and in such portions** as may be sanctioned by the Home Secretary.

The nature and effect of the power of burial authorities to allot a particular part of the unconsecrated portion of their burial grounds to a specified denomination was considered in *Preston Corporation v. Pyke*.<sup>2</sup> In that case, the following principles were recognised and applied:—

1. Although **section 7 of the Burial Act, 1853**, authorizes the allotment of portions of the unconsecrated ground for burials exclusively of persons belonging to a denomination for whom an allotment is made, individual members of particular denominations do *not* thereby acquire any *greater* rights within any portion so allotted than they previously possessed in respect of the burial ground as a whole.
2. The effect of an allotment is to appropriate the respective parts of the burial ground for the *exclusive* burial of persons of the denominations concerned.

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<sup>1</sup> Originally, the Local Government Board; for the relevant transfer provisions, see footnote 2, p. 32, *supra*.

<sup>2</sup> [1929] 2 Ch. 338.



3. A parishioner who is a member of a particular denomination has a *right* of interment in the portion, but *not* in any *particular part* of the portion, allotted for his own denomination.
4. A member of a particular denomination has no right *as a parishioner* to interfere with the burial in the portion allotted for his own denomination of a parishioner of a different denomination.
5. The Attorney-General, however, may, if he thinks fit, institute proceedings for an Order restraining the appropriate burial authority from permitting burials in any allotted ground of persons who are not members of the denomination concerned.
6. Although nothing in the **Burial Act, 1853**, enables any particular rites or ceremonies to be *enforced* in regard to burials within any allotted portion of a burial ground, it is not unlawful for such rites or ceremonies to be performed.

## PROVISION OF CHAPELS FOR THE PERFORMANCE OF FUNERAL SERVICES.

### Udenominational Chapels.

Under section 2 (1) of the Burial Act, 1900, a burial authority<sup>1</sup> may at their own cost erect on any part of their burial ground, which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act<sup>2</sup> shall not be consecrated or reserved for the exclusive use of any denomination.

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<sup>1</sup> For the meaning of "burial authority", see footnote 2, p. 33, *supra*.

<sup>2</sup> *I.e.*, after 10th July, 1900.



### **Denominational Chapels.**

At the request and cost of the residents within their district belonging to any particular denomination, a burial authority is empowered by section 2 (2) of the Burial Act, 1900, to erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

If such a request is made and the estimated costs are tendered to the burial authority or reasonably secured, and the burial authority refuse to grant the request or fail to give effect to it within a reasonable time, section 2 (3) provides that the Home Secretary may, if he thinks fit, by order in writing, require the burial authority to erect, furnish, and maintain or to give facilities for erecting, furnishing, and maintaining, such a chapel in accordance with directions given in the order, and the burial authority shall comply with the order.

### **INQUIRIES BY THE HOME SECRETARY REGARDING CONSECRATION, CHAPELS AND FEES.**

By section 5 (1) of the Burial Act, 1900, the Home Secretary may, if he thinks fit, appoint any person to inquire into any matter relating to the consecration of any part of a burial ground, or the building of any chapel therein, or the fixing, varying, or commutation of or compensation for any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith.

The costs of the inquiry, including the remuneration (not exceeding five guineas a day) and expenses of the person holding the inquiry, are to be paid by the burial authority or other parties in accordance with any Order the Home Secretary thinks just to make. Such an Order may direct payment to be made to the Exchequer or other parties, and may be enforced as if it were an Order of the High Court.<sup>1</sup>

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<sup>1</sup> Burial Act, 1900, s. 5 (2) and (3).



## PROVISION OF MORTUARIES AND POST-MORTEM ROOMS.

By section 198 of the Public Health Act, 1936:—

(1) A local authority<sup>1</sup> or a parish council may, and if required by the Minister<sup>2</sup> shall, provide:—

- (a) a mortuary for the reception<sup>3</sup> of dead bodies before interment;
- (b) a post-mortem room for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other duly authorised authority;

and may make byelaws<sup>4</sup> with respect to the management, and charges for the use, of any such place provided by them.

(2) A local authority or parish council may provide for the interment of any dead body which may be received into their mortuary.

In the case of burial boards, it should be observed that the relevant powers regarding the provision of places for the reception of bodies until interment are to be found in **section 42 of the Burial Act, 1852.**

As regards London, the provision of mortuaries and post-mortem rooms is governed by **sections 234 to 239**

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<sup>1</sup> Defined by s. 1 (2) of the Public Health Act, 1936, as the council of a borough, urban district or rural district.

<sup>2</sup> Now the Minister of Housing and Local Government, by virtue of the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 2) Order, 1951, S.I. 1951 No. 753, and the Minister of Local Government and Planning (Change of Style and Title) Order, 1951, S.I. 1951 No. 1900.

<sup>3</sup> Mortuary Registers are printed by Shaw & Sons Ltd. under Cat. Nos. DC 52 and DC 52r (loose sheets).

<sup>4</sup> It is important to note that the Burial Acts, 1852 to 1906, do not authorise the making of byelaws with regard to the management or use of burial grounds, but some burial authorities may have byelaw-making powers under a local Act. Contrast the position of cemetery authorities under the Public Health (Interments) Act, 1879; *see* Chapter 3, p. 48, head 3, *infra*.



of the **Public Health (London) Act, 1936**, the responsible authorities being:—

- (1) the Common Council of the City of London;
- (2) each Metropolitan Borough Council;
- (3) the authorities of the Inner and Middle Temples;  
and
- (4) the London County Council, as regards mortuaries for the reception of *unidentified* dead bodies.

### OFFENCES AND PENALTIES IN REGARD TO BURIAL GROUNDS.

**Offences and Penalties under the Burial Act, 1852, and the Cemeteries Clauses Act, 1847.**

Section 40 of the Burial Act, 1852,<sup>1</sup> incorporates and applies the following two provisions of the **Cemeteries Clauses Act, 1847**, relating to penalties for causing damage or creating a disturbance or nuisance in any burial ground provided under the Burial Acts:—

#### (1) *Damage.*

Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the burial ground, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the burial ground, or do any other wilful damage therein, shall forfeit<sup>2</sup> . . . for every such offence a sum not exceeding FIVE POUNDS [£5].<sup>3</sup> In addition, the person may be ordered to make good the damage.<sup>4</sup>

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<sup>1</sup> See footnote 1, p. 24, *supra*.

<sup>2</sup> The original words that followed here were "to the company" but they are now repealed by s. 46 (2) of, and Part III of the Seventh Schedule to, the Justices of the Peace Act, 1949. As to the application of forfeited sums and fines generally, see s. 27 (1) of that Act.

<sup>3</sup> Cemeteries Clauses Act, 1847, s. 58, as incorporated and applied by the Burial Act, 1852, s. 40.

<sup>4</sup> Railways Clauses Consolidation Act, 1845, s. 152, as incorporated with the Cemeteries Clauses Act, 1847, by s. 62 of that Act.



(2) *Disturbance and Nuisance.*

Every person who shall play at any game or sport, or discharge firearms, save at a military funeral, in the burial ground, or who shall wilfully and unlawfully disturb any persons assembled in the burial ground for the purpose of burying any body therein, or who shall commit any nuisance within the burial ground, shall forfeit<sup>1</sup> . . . for every such offence a sum not exceeding FIVE POUNDS [£5].<sup>2</sup>

### Offences and Penalty under the Malicious Damage Act, 1861.

#### *Malicious Destruction or Damage.*

Section 39 of the Malicious Damage Act, 1861,<sup>3</sup> provides, *inter alia*:—

Whosoever shall unlawfully or maliciously destroy or damage any . . . statue, monument or other memorial of the dead . . . in any church, chapel, meeting house, or other place of divine worship, or in any . . . churchyard, burial ground, public garden or ground . . . or any ornament, railing, or fence surrounding such statue or monument shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for any term not exceeding SIX MONTHS.

### CONVEYANCE OF BODIES TO BURIAL GROUNDS.

Burial authorities are empowered by section 41 of the Burial Act, 1852,<sup>4</sup> to make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the place of death to the place of burial.

<sup>1</sup> See footnote 2, p. 40, *supra*.

<sup>2</sup> Cemeteries Clauses Act, 1847, s. 59, as incorporated and applied by the Burial Act, 1852, s. 40.

<sup>3</sup> As amended by the Criminal Justice Act, 1948, s. 83 (3), and Part I of the Tenth Schedule.

<sup>4</sup> See footnote 1, p. 24, *supra*.



In *Owens v. Liverpool Corporation*,<sup>1</sup> the Court of Appeal **held** that, where a tramcar was so negligently driven by a servant of the defendants that it violently collided with a hearse in a funeral procession and caused the coffin to be overturned, the relatives of the deceased were entitled to recover damages<sup>2</sup> in respect of their severe mental shock.

### **POWERS OF THE MINISTER OF HOUSING AND LOCAL GOVERNMENT REGARDING THE SUPERVISION OF BURIAL GROUNDS AND CEMETERIES.<sup>3</sup>**

#### **Power to Make Regulations.**

Under section 44 of the Burial Act, 1852,<sup>4</sup> the Minister of Housing and Local Government is empowered **from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under the Burial Acts, as to him may seem proper, for the protection of the public health and the maintenance of public decency.**

Burial authorities and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.<sup>5</sup>

Section 8 of the Burial Act, 1855, provides, *inter alia*, that persons who **violate or neglect or fail to observe and comply with** the regulations are liable on summary conviction to a penalty **not exceeding TEN POUNDS [£10].**

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<sup>1</sup> [1939] 1 K.B. 394.

<sup>2</sup> Assessed at £75 for the aged mother of the deceased; £15 for an uncle; £100 for a cousin, and £11 for the cousin's husband.

<sup>3</sup> For the general provisions whereby the following supervisory functions under the Burial Acts, 1852 to 1906, were transferred to the Minister of Housing and Local Government, see footnote <sup>2</sup>, p. 32, *supra*.

<sup>4</sup> See footnote <sup>1</sup>, p. 24, *supra*.

<sup>5</sup> Burial Act, 1852, s. 44.



**Power to Inspect Burial Grounds and Cemeteries to Ascertain Whether Regulations have been Observed.**

Under section 8 of the Burial Act, 1855, the Minister of Housing and Local Government may from time to time appoint and authorise any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the Minister . . ., to ascertain whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery or other place shall obstruct any person so authorised to inspect the same, he shall be liable on summary conviction to a penalty not exceeding TEN POUNDS [£10].

**Power to Prevent Vaults or Places of Burial Becoming or Continuing Dangerous or Injurious to Public Health.**

Upon the representation of the Minister of Housing and Local Government, Orders in Council may be issued under section 23 of the Burial Act, 1857, requiring acts to be done by or under the directions of the persons<sup>1</sup> having the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health. Every such Order must be published in the *London Gazette*<sup>2</sup>, and by section 1 of the Burial Act, 1859, if the requirements of the Order are not carried out within a reasonable time, the Minister

<sup>1</sup> In the case of *churchyard* burial grounds, the responsible authority is now the parochial church council and not the churchwardens as hitherto: Parochial Church Councils (Powers) Measure, 1921, s. 4 (1) (ii) (c). As regards other burial grounds, the appropriate burial authority will be the "person" concerned.

<sup>2</sup> Burial Act, 1857, s. 23.



may authorise and direct the local authority<sup>1</sup> for the area where the vaults or place of burial is situated forthwith to do or complete the acts mentioned in the Order, or such of them as remain undone.

In *Foster v. Dodd*,<sup>2</sup> it was **held** that the power to make an Order in Council under **section 23** of the 1857 Act above is only exercisable where an existing burial ground is under the care of the person having charge of it *for the purpose of the burial* of the dead. Thus, an Order made in respect of a *disused and closed* public burial ground was declared to be invalid, with the result that persons purporting to act under an authority and direction given under **section 1** of the 1859 Act above, were liable as trespassers.

Similarly, in *Jacobson v. St. Pancras Vestry*,<sup>3</sup> an Order in Council under **section 23 of the Burial Act, 1857**, in respect of a *closed private* burial ground was **held** to be bad.

Where a Faculty from the Ordinary is required, as in the case of a direction to remove and reinter elsewhere human remains underneath a church, it was **held** in *Lee v. Hawtrey*<sup>4</sup> that an Order in Council under **section 23 of the Burial Act, 1857**, afforded no justification for complying with the Order *without first* obtaining the necessary Faculty.<sup>5</sup>

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<sup>1</sup> Originally, the authority and direction were given to the churchwardens, but their *civil* functions have now been transferred to borough and urban district councils under s. 269 (1) (b) of the Local Government Act, 1933, and to parish councils in the case of rural districts, under the Local Government Act, 1894, s. 6 (1) (b).

<sup>2</sup> (1867), L.R. 3 Q.B. 67.

<sup>3</sup> (1880), 44 J.P. 184.

<sup>4</sup> [1898] P. 63.

<sup>5</sup> See also, *St. Mary-at-Hill with St. Andrew Hubbard (Rector, etc.) v. St. Mary-at-Hill with St. Andrew Hubbard (Parishioners)*, [1892], P. 394; and *St. Michael Bassishaw (Rector, etc.) v. St. Michael Bassishaw (Parishioners)*, [1893] P. 233.



## POWERS OF THE HOME SECRETARY IN REGARD TO BURIAL SERVICE FEES.

Section 3 (1) of the Burial Act, 1900, provides that every burial authority shall submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications.

It is further provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground.

By section 3 (2), the Secretary of State may himself make a table of fees if a burial authority fail to submit such a table on his request.

Finally, section 3 (3)<sup>1</sup> empowers the Home Secretary to give directions as to the manner of payment of the fees in respect of burial services in cases where agreement cannot be reached between the burial authority who collected the fees and the Minister or sexton concerned.

## RATING OF BURIAL GROUNDS AND BURIAL FEES.

By section 15 of the Burial Act, 1855:—

No land already or to be hereafter<sup>2</sup> purchased or acquired, under the provisions of any of the Acts hereinbefore recited,<sup>3</sup> for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.

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<sup>1</sup> For the wording of this provision, see Chapter 6, p. 110, *infra*.

<sup>2</sup> *I.e.*, after 14th August, 1855.

<sup>3</sup> The Acts recited are the Burial Act, 1852; the Burial Act, 1853, and the Burial Act, 1854.



If the burial ground or cemetery is not provided *under the Burial Acts*, it is important to note that the above provision does not apply. For example, in *R. v. St. Mary Abbot's, Kensington*,<sup>1</sup> a private cemetery company, established under a local Act, were **held** to be in rateable occupation of their lands and liable to be rated on the *normal* annual value basis, the profits arising from the sale of exclusive rights of burial having to be included in the rateable value of the cemetery as a whole.

Again, cemeteries provided by local authorities under the **Public Health (Interments) Act, 1879**,<sup>2</sup> receive no special privileges in regard to their liability for rates, which is accordingly governed by ordinary rating principles.

As regards *churchyard* burial grounds, the House of Lords **held** in *Winstanley v. North Manchester Overseers*<sup>3</sup> that the rector of a parish was the beneficial occupier of such a burial ground, and accordingly liable to be rated in respect of burial fees and other charges received by him in connection with interments in the churchyard.

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<sup>1</sup> (1840), 12 Ad. & El. 824.

<sup>2</sup> See Chapter 3, pp. 47 to 51, *infra*.

<sup>3</sup> [1910] A.C. 7.

## CHAPTER 3

### PROVISION, MANAGEMENT AND USE OF CEMETERIES UNDER THE PUBLIC HEALTH (INTERMENTS) ACT, 1879,<sup>1</sup> AND THE CEMETERIES CLAUSES ACT, 1847.<sup>2</sup>

#### 1.—PROVISION AND ESTABLISHMENT OF CEMETERIES UNDER THE PUBLIC HEALTH (INTERMENTS) ACT, 1879, AND THE CEMETERIES CLAUSES ACT, 1847.

#### GENERAL POWERS AND PROVISIONS.

Under section 2 (1) of the Public Health (Interments) Act, 1879, the provisions of the principal Act<sup>3</sup> relating to mortuaries were extended to cemeteries, and the purposes of that Act were to include the acquisition, construction and maintenance of a cemetery.

With the relevant provisions of the Public Health Act, 1875, *i.e.*, the former principal Act, now repealed and

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<sup>1</sup> This particular Act does not apply to London.

<sup>2</sup> This Act is incorporated with the Public Health (Interments) Act, 1879, by s. 3 of that Act. It also extends to any cemetery authorised by any Act of Parliament passed after 9th July, 1847, which declares that the 1847 Act shall be incorporated therewith. For this connection, many local Acts, both in London and elsewhere, authorising the establishment of cemeteries have incorporated the Cemeteries Clauses Act, 1847.

<sup>3</sup> Originally, the Public Health Act, 1875, ss. 141 and 142, but now the Public Health Act, 1936, s. 198. For the latter provision, see Chapter 2, p. 39, *supra*.



replaced by **section 198 of the Public Health Act, 1936**,<sup>1</sup> the general position regarding the establishment of cemeteries by local authorities under the **Public Health (Interments) Act, 1879**, may be stated as follows:—

1. A local authority<sup>2</sup> *may*, and if required by the Minister of Housing and Local Government<sup>3</sup> *must*, provide a place for the interment of the dead.
2. For the purposes of the 1879 Act, a place for the interment of the dead is called a cemetery.<sup>4</sup>
3. Any borough, urban district, or rural district council providing a cemetery under the 1879 Act have power to make byelaws<sup>5</sup> with respect to:—
  - (1) the management of the cemetery; and
  - (2) charges for its use.<sup>6</sup>
4. Because the acquisition, construction and maintenance of a cemetery are now included in the purposes of the Public Health Act, 1936, **section 306** of that Act<sup>7</sup> enables land to be acquired *compulsorily*<sup>8</sup> in accordance with an

<sup>1</sup> For details of this governing provision, see Chapter 2, p. 39, *supra*.

<sup>2</sup> Defined by s. 1 (2) of the Public Health Act, 1936, as the council of a borough, urban district or rural district.

<sup>3</sup> Originally, the Local Government Board: for the relevant transfer provisions, see Chapter 2, p. 32, footnote 2, *supra*.

<sup>4</sup> Public Health (Interments) Act, 1879, s. 2 (1). By s. 3 of the Cemeteries Clauses Act, 1847, the expression "the cemetery" means the cemetery or burial ground, and the works connected therewith, authorised to be constructed.

<sup>5</sup> Contrast the position where burial grounds are provided under the Burial Acts, 1852 to 1906: see Chapter 2, p. 39, footnote 4, *supra*.

<sup>6</sup> Public Health Act, 1936, s. 198 (1). For appropriate model byelaws, see No. XIV of the Model Series issued by the Minister of Housing and Local Government and reprinted in 1951.

<sup>7</sup> As amended by s. 6 of, and the Fourth Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946.

<sup>8</sup> It is important to note that although burial boards as such have no powers of acquiring land compulsorily under the Burial Acts, 1852 to 1906, local authorities which are also burial authorities may acquire land compulsorily for burial ground, cemetery and crematorium purposes under ss. 159 and 168 of the Local Government Act, 1933, or, as regards London, under s. 100 of the London Government Act, 1939. Alternatively, compulsory powers are now available under ss. 5, 37 and 38 of the Town and Country Planning Act, 1947.



authorisation from the Minister of Housing and Local Government.<sup>1</sup>

5. A local authority<sup>2</sup> may acquire, construct and maintain a cemetery either wholly or partly within or outside their district.<sup>3</sup>
6. Where the whole or part of a cemetery is provided by a local authority outside its own area, the consent of the Minister of Housing and Local Government is now required if objections are made by any owner or occupier of land directly affected or by the local authority of the district concerned.<sup>4</sup>
7. Subject to certain later statutory exceptions,<sup>5</sup> the powers and provisions of the **Cemeteries Clauses Act, 1847**, apply to all cemeteries established under the **Public Health (Interments) Act, 1879**.<sup>6</sup>
8. **Section 2 (3)** of the 1879 Act empowers a local authority<sup>2</sup> to **accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.**
9. By **section 11 of the Burial Act, 1900**, the expression "burial authority" includes **any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879**,<sup>7</sup> and, therefore, the provisions of this important Burial Act apply accordingly.

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<sup>1</sup> For the appropriate procedure, *see* the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 1 and the First Schedule.

<sup>2</sup> *I.e.*, the council of a county borough, non-county borough, urban district or rural district: *see* footnote 2, p. 48, *supra*.

<sup>3</sup> Public Health (Interments) Act, 1879, s. 2 (2).

<sup>4</sup> Public Health Act, 1936, s. 16, which now replaces the earlier provisions contained in ss. 32 to 34 of the Public Health Act, 1875, and applied by s. 2 (2) of the Public Health (Interments) Act, 1879.

<sup>5</sup> *See* pp. 52 to 55, *infra*.

<sup>6</sup> Public Health (Interments) Act, 1879, s. 3.

<sup>7</sup> *See also* s. 2 of the Cremation Act, 1902, to the same effect ; *supra*, Chapter 1, p. 15, and Chapter 8, p. 137, footnote 1, *infra*.



## POSITION OF CEMETERIES.

Section 10 of the Cemeteries Clauses Act, 1847,<sup>1</sup> provides that **no part of the cemetery shall be constructed nearer than *one hundred yards* to any dwelling-house except with the consent in writing of the owner, lessee, and occupier of such house.**

It will be observed that the above prohibition is against *construction* and not merely against *use for burials*, as in the case of burial grounds provided under the Burial Acts, 1852 to 1906.<sup>2</sup> The distance is to be measured “as the crow flies”, and from the actual walls, not curtilage, of the dwelling-house.<sup>3</sup>

## PROVISION OF CHAPELS AND POWER TO LAYOUT AND EMBELLISH THE CEMETERY GROUNDS.

Under section 11 of the Cemeteries Clauses Act, 1847, a cemetery authority<sup>4</sup> may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit.

In the case of cemeteries provided by local authorities under the **Public Health (Interments) Act, 1879**, the provisions of **section 2 of the Burial Act, 1900**,<sup>5</sup> apply with regard to the erection of chapels, and by **section**

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<sup>1</sup> As amended by s. 2 of the Burial Act, 1906, for the purpose of cemeteries provided under the Public Health (Interments) Act, 1879. In the case of *private* cemeteries established under special Acts, the distance is still *two hundred yards*.

<sup>2</sup> See Burial Act, 1855, s. 9, *supra* Chapter 2, p. 26.

<sup>3</sup> *Lake v. Butler* (1855), 5 E. & B. 92, and *Wright v. Wallasey Local Board* (1887), 18 Q.B.D. 783; see Chapter 2, p. 27, *supra*.

<sup>4</sup> For the purposes of this Chapter, cemetery authorities include (1) cemetery companies acting under special Acts authorising the making of a cemetery and incorporating the Cemeteries Clauses Act, 1847, and (2) local authorities providing and maintaining a cemetery under the Public Health (Interments) Act, 1879.

<sup>5</sup> See Chapter 2, pp. 37 and 38, *supra*.



2 (4) of that Act such authorities are now relieved of the obligation, formerly imposed by **section 25 of the Cemeteries Clauses Act, 1847**,<sup>1</sup> to build a Church of England chapel within the consecrated part of the cemetery.

### **POWER TO MAKE, IMPROVE AND MAINTAIN ROADS.**

By **section 12 of the Cemeteries Clauses Act, 1847**, a cemetery authority may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

Before an existing road is widened or improved, however, the consent of the owner must be obtained in the case of a private road; if the road is a public one, consent must be granted by the appropriate highway authority.<sup>2</sup> Power to enter into agreements for the widening, improvement and maintaining of roads is contained in **section 14** of the 1847 Act.

### **ENCLOSURE OF CEMETERIES.**

Cemetery *companies* must enclose every part of their cemeteries by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed, by substantial walls or iron railings of the height of eight feet at least.<sup>3</sup>

It is important to note that **section 10 of the Burial Act, 1900**, expressly relieves local authorities from this fencing obligation in cases where they provide a cemetery under the **Public Health (Interments) Act, 1879**.

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<sup>1</sup> This provision still applies, however, in the case of cemetery *companies*; see p. 53, *infra*.

<sup>2</sup> Cemeteries Clauses Act, 1847, s. 13.

<sup>3</sup> Cemeteries Clauses Act, 1847, s. 15.



## 2.—MANAGEMENT AND USE OF CEMETERIES UNDER THE PUBLIC HEALTH (INTERMENTS) ACT, 1879, AND THE CEMETERIES CLAUSES ACT, 1847.

### GENERAL OBLIGATION TO KEEP IN REPAIR AND TO COMPENSATE FOR DAMAGE.

Section 16 of the Cemeteries Clauses Act, 1847, imposes a positive duty upon cemetery authorities to **keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition**. Moreover, by **section 17**, the powers of cemetery authorities must be exercised so as to **do as little damage as can be**, and it is further provided that they **shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers**.

As owners and occupiers of land, cemetery authorities are, of course, subject to the normal duties of owners and occupiers generally. Thus, in *R. v. St. Mary Abbot's, Kensington*,<sup>1</sup> a cemetery company were **held** to be in rateable occupation of their lands and accordingly liable for rates.<sup>2</sup> Similarly, in *St. Giles, Camberwell Vestry v. London Cemetery Co.*,<sup>3</sup> the company, as owners of adjoining land, were **held** responsible for the appropriate proportion of the expenses incurred in paving a new street.

### CONSECRATION PROCEDURE AND DUTIES REGARDING CHAPELS AND CHAPLAINS.

It is important to note that since the **Burial Act, 1900**, most of the following provisions of the **Cemeteries**

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<sup>1</sup> (1840), 12 Ad. & El. 824.

<sup>2</sup> See also *R. v. Abney Park Cemetery Co.* (1873), L.R. 8 Q.B. 515, where sums received from the grant of exclusive burial rights were held to be properly assessable as part of the rateable value of the cemetery.

<sup>3</sup> [1894] 1 Q.B. 699.



**Clauses Act, 1847**, regarding the consecration and use of part of a cemetery, the provision of a Church of England chapel, the appointment and duties of Chaplains, and the allotment of unconsecrated ground, do *not* apply in the case of cemeteries provided by a local authority under the **Public Health (Interments) Act, 1879**. As regards cemetery companies, however, they are still of considerable importance.

### **Consecration of Part of a Cemetery provided by a Cemetery Company.<sup>1</sup>**

The bishop of the diocese in which the cemetery is situated may, on the application of the company, consecrate any portion of the cemetery set apart for the burial of the dead according the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

(Cemeteries Clauses Act, 1847, section 23.)

### **Duty of Cemetery Company<sup>2</sup> to provide a Church of England Chapel on Part of the Consecrated Ground.**

The company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

(Cemeteries Clauses Act, 1847, section 25.)

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<sup>1</sup> As to consecration where a local authority provides a cemetery under the Public Health (Interments) Act, 1879, *see* s. 1 of the Burial Act, 1900, *supra*, Chapter 2, pp. 33 and 34.

<sup>2</sup> In the case of cemeteries provided by local authorities under the Public Health (Interments) Act, 1879, this obligation ceased under s. 2 (4) of the Burial Act, 1900. For the position regarding the provision of chapels by such authorities, *see* s. 2 (1), (2) and (3) of the 1900 Act, *supra*, Chapter 2, pp. 37 and 38.



### **Appointment of Chaplains by Cemetery Companies.<sup>1</sup>**

The company shall from time to time, with the approval of the bishop of the diocese in which the cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery ; and such chaplain shall be licensed by and be subject to the jurisdiction of the said bishop, and the said bishop shall have power to revoke any such licence, and to remove such chaplain, for any cause which appears to him reasonable.

(Cemeteries Clauses Act, 1847, section 27.)

### **Duty of Chaplain appointed by a Cemetery Company.**

The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to the rites and usage of the Established Church.

(Cemeteries Clauses Act, 1847, section 28.)

### **Performance of the Burial Service by Clergymen other than the Chaplain.**

Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery.

(Cemeteries Clauses Act, 1847, section 29.)

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<sup>1</sup> Section 7 of the Burial Act, 1900, terminated the power of burial authorities to appoint chaplains for burial grounds provided under the Public Health (Interments) Act, 1879.



### Payment of Stipend to the Chaplain.

By section 30 of the Cemeteries Clauses Act, 1847, a cemetery company must pay their chaplain **such a stipend as is approved by the bishop of the diocese in which the cemetery is situated.** Payment is to be made half-yearly on the 25th of March and the 29th of September, and if any part is in arrear for *thirty days* it may be recovered by action under section 31 of the Act.

### POWER OF CEMETERY COMPANIES<sup>1</sup> TO ALLOT UNCONSECRATED GROUND FOR THE BURIAL OF PERSONS WHO ARE NOT MEMBERS OF THE CHURCH OF ENGLAND.

Section 35 of the Cemeteries Clauses Act, 1847, provides:—

The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint.

### PERFORMANCE OF ANY BURIAL SERVICE MAY BE ALLOWED IN CHAPELS ON UNCONSECRATED GROUND.

Cemetery authorities<sup>2</sup> may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any church or congregation other than the Established Church, by

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<sup>1</sup> By s. 9 of the Burial Act, 1900, the allotment of unconsecrated ground by a local authority providing a cemetery under the Public Health (Interments) Act, 1879, is now governed by s. 7 of the Burial Act, 1853, with the result that the unconsecrated part of such a cemetery must be allotted in such manner and in such portions as may be sanctioned by the Home Secretary: see Chapter 2, pp. 36 and 37, *supra*.

<sup>2</sup> See footnote 4, p. 50, *supra*.



any minister of such other church or congregation duly authorised by law to officiate in such church or congregation, or recognised as such by the religious community or society to which he belongs.

(Cemeteries Clauses Act, 1847, section 36.)

### POWER TO APPOINT GRAVEDIGGERS AND OTHER SERVANTS.

Cemetery authorities may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit . . . , and may remove them or any of them at their pleasure.

(Cemeteries Clauses Act, 1847, section 37.)

The wide powers of cemetery authorities in regard to persons employed as their servants is well illustrated by *Martin v. Wyatt*,<sup>1</sup> where the Divisional Court held that a discharged cemetery employee, who was prohibited under a byelaw from entering the cemetery except by special leave of the directors, could be lawfully excluded by force and so prevented from carrying out work in the cemetery on behalf of the owner of a grave. It was further held that there was nothing unreasonable in such a byelaw.

### REGULATIONS AND GENERAL PROVISIONS.

#### Regulations.

By section 38 of the Cemeteries Clauses Act, 1847, cemetery authorities are required to make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

#### Prohibition of Burials Under or Close to Chapels.

No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

(Cemeteries Clauses Act, 1847, section 39.)

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<sup>1</sup> (1883), 48 J.P. 215.



### **Removal of Bodies from Consecrated Ground.**

No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church.<sup>1</sup>

(Cemeteries Clauses Act, 1847, section 26.)

### **Demarcation of Consecrated and Unconsecrated Ground.<sup>2</sup>**

By section 24 of the Cemeteries Clauses Act, 1847, cemetery authorities must define by suitable marks the consecrated and unconsecrated portions of the cemetery.<sup>3</sup>

## **GRANT OF EXCLUSIVE RIGHTS OF BURIAL AND OF RIGHTS AS TO MONUMENTS, GRAVESTONES, TABLETS AND INSCRIPTIONS.**

### **Power to Set Aside Parts of the Cemetery and to Sell Rights.**

By section 40 of the Cemeteries Clauses Act, 1847, cemetery authorities may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.

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<sup>1</sup> For details of the requirements regarding the disinterment of the dead, see Chapter 9, pp. 165 to 173, *infra*.

<sup>2</sup> See footnote 1, Chapter 2, p. 35, *supra*.

<sup>3</sup> See *R. v. Tiverton Burial Board* (1858), 31 L.T. (O.S.) 233, *supra*, Chapter 2, p. 35.



**Duty to Make a Plan and to Keep a Reference Book where Parts of a Cemetery are Set Apart for the Grant of Exclusive Rights of Burial.**

Section 41 of the 1847 Act provides that a cemetery authority must cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted ; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose,<sup>1</sup> and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the cemetery authority; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the authority.

**Form, Effect, and Registration of Grants of Exclusive Burial and other Rights.**

The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet or gravestone, may be made in the form prescribed in the Schedule to the 1847 Act or in a form to the like effect.<sup>2</sup>

(Cemeteries Clauses Act, 1847, section 42.)

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<sup>1</sup> Registers of Purchased Graves are printed by Shaw & Sons Ltd., under Cat. No. BUR 4.

<sup>2</sup> Forms of Grant of Exclusive Burial Rights, with Duplicates to be retained by the Cemetery Authority, are printed to order by Shaw & Sons Ltd. Applications for Permission to Erect Monuments, etc., are printed under Cat. No. BUR 36. A separate form of Grant of such Permission, with Notice to the Cemetery Superintendent, is also obtainable under Cat. No. BUR 37.

*Form of Grants.*<sup>1</sup>

The form of grant, as set out in the Schedule to the **Cemeteries Clauses Act, 1847**, but modified slightly so as to apply both to cemetery companies and local authorities providing a cemetery under the **Public Health (Interments) Act, 1879**, is as follows:—

**FORM OF GRANT OF RIGHT OF BURIAL.**

By virtue of [*here name the Act authorising the making of the cemetery*], we [*here state the name or description of the cemetery authority*], in consideration of the sum of \_\_\_\_\_ to us paid by \_\_\_\_\_,  
 . \_\_\_\_\_,  
 of \_\_\_\_\_,  
 do hereby grant unto the said \_\_\_\_\_  
 the exclusive right of burial [*or the right of burying*  
 . \_\_\_\_\_ *bodies, as the case may be,*] [*or the right of placing a monument, tablet, or gravestone,*] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add " numbered \_\_\_\_\_ on the plan of the cemetery, made in pursuance of the said Act,"*] to hold the same to the said \_\_\_\_\_  
 in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].<sup>2</sup>

Given under our common seal, [*or under our hands and seals, as the case may be,*] this \_\_\_\_\_  
 day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_

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<sup>1</sup> See footnote 2, p. 58, *supra*.

<sup>2</sup> For the desirability of inserting here an appropriate Certificate of Value for stamp duty purposes, see p. 60, *infra*.



*Position Regarding Stamp Duty.*

In order to keep stamp duty to a minimum, the Form of Grant prescribed in the Schedule to the 1847 Act above should now contain a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £500. Such a Certificate of Value is provided for by **section 73 of the Finance (1909-10) Act, 1910**, and seems to be necessary if reduced stamp duty is to be paid, since, although the Grant of an Exclusive Right of Burial does not convey any estate or interest in the *land* itself,<sup>1</sup> it would nevertheless appear to be "a conveyance or transfer on sale" within the meaning of **section 54 of the Stamp Act, 1891**, so as to apply the following Table of Duties, based upon the reduced rate of 10s. per cent. where there is a Certificate of Value and the normal rate of £2 per cent. where there is no such Certificate.

Amount or Value of Consideration.	STAMP DUTY PAYABLE	
	Where Certificate of Value under s. 73 of the Finance (1909-10) Act, 1910.	Where No Certificate of Value.
Not exceeding £25 ...	6d. for each £5 or part of £5.	2s. for each £5 or part of £5.
Exceeding £25 but not £300	2s. 6d. for each £25 or part of £25.	10s. for each £25 or part of £25.
Exceeding £300 but not £500	5s. for each £50 or part of £50.	£1 for each £50 or part of £50.

<sup>1</sup> See head (2), p. 61, *infra*.



*Effect of Grants.*

It must be emphasised that the grant of an exclusive right of burial is strictly limited to the terms of the grant itself, and in no case can it:—

- (1) divest the cemetery authority of any of their rights and responsibilities as owners and occupiers of the land concerned<sup>1</sup>;
- (2) confer any proprietary rights upon the grantee in respect of the *land* as such or as regards any vaults constructed on the land<sup>2</sup>;
- (3) relieve the cemetery authority of their liability to be rated in respect of their beneficial occupation of the cemetery as a whole<sup>3</sup>; or
- (4) give any right to bury **within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Established Church, or to place any monument, gravestone, tablet or monumental inscription respecting any such body within the consecrated part of the cemetery.**<sup>4</sup>

Finally, section 48 of the Cemeteries Clauses Act, 1847, provides:—

**No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the cemetery authority, except with the consent of the owner for the time being of such exclusive right of burial.**

<sup>1</sup> See *London Cemetery Co. v. Cundey*, [1953] 2 All E.R. 257, *supra*, Chapter 2, p. 31, where it was held that the owner of an exclusive right of burial was *not* liable to indemnify the cemetery company for damage caused by the fall of a dead elm tree previously growing on the plot in respect of which the burial right had been granted.

<sup>2</sup> See *Hoskins-Abrahall v. Paignton Urban District Council*, [1929] 1 Ch. 375, *supra*, Chapter 2, p. 30, where the Court of Appeal held that the grantee of an exclusive burial right who had also purchased a right to erect a vault was *not* entitled to open the vault without the consent of the cemetery authority for the purpose of depositing food, wine, furniture and other articles therein and performing special ceremonies and private rites.

<sup>3</sup> See *R. v. St. Mary Abbot's, Kensington* (1840), 12 Ad. & El. 824, and *R. v. Abney Park Cemetery Co.* (1873), L.R. 8 Q.B. 515, *supra*, p. 52.

<sup>4</sup> Cemeteries Clauses Act, 1847, s. 49.



*Registration of Grants.*

By section 43 of the Cemeteries Clauses Act, 1847, a register of grants is to be kept by the clerk to the cemetery authority, who within 14 days of each grant must make an entry or memorial of:—

- (i) the date of the grant;
- (ii) the parties thereto; and
- (iii) the consideration for the grant.<sup>1</sup>

The register must also contain a proper description of the ground described in the grant so that its situation may be ascertained.

A sum not exceeding the prescribed sum, or, if no sum is prescribed, a sum of 2/6d., may be charged for the entry or memorial; and the register may be perused at all reasonable times by any grantee or assignee of any right upon payment to the clerk of the authority of the prescribed sum, or if no sum is prescribed, of 1/-.<sup>2</sup>

## ASSIGNMENT OF EXCLUSIVE RIGHTS OF BURIAL.

### **Rights may be Assigned by Deed or Will.**

Section 44 of the 1847 Act provides that an exclusive right of burial must, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will.

### **Form of Assignments by Deed.**

By section 45 of the Cemeteries Clauses Act, 1847, any assignment made in the lifetime of the assignor shall be by deed duly stamped<sup>3</sup>, in which the consideration shall

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<sup>1</sup> Registers of Grants of Exclusive Burial Rights are printed by Shaw & Sons Ltd., under Cat. No. BUR 35. These Registers include appropriate columns for entries on an assignment of an exclusive right of burial: *see below.*

<sup>2</sup> Cemeteries Clauses Act, 1847, s. 43.

<sup>3</sup> Since the assignment appears to be "a conveyance or transfer on sale" within the meaning of s. 54 of the Stamp Act, 1891, a Certificate of Value will be necessary if the reduced rate of stamp duty is to be properly payable: *see p. 60, supra.*



be duly set forth, and *may* be in the following form, as set out in the Schedule to the Act but slightly modified to include cemeteries provided by local authorities under the **Public Health (Interments) Act, 1879**, or in a form to the like effect.<sup>1</sup>

### FORM OF ASSIGNMENT OF RIGHT OF BURIAL.

I, A.B., of \_\_\_\_\_,  
 in consideration of the sum of \_\_\_\_\_ paid to  
 me by C.D., of \_\_\_\_\_ do hereby  
 assign unto the said C.D. the exclusive right of burial  
 in [*here describe the place*], and numbered \_\_\_\_\_  
 on the plan of the cemetery made in pursuance of the  
 said Act, which was granted to me [*or unto A.B. of*  
 \_\_\_\_\_] in perpetuity [*or as the case may*  
*be*] by [*here state the name of the cemetery authority*],  
 by a deed of grant bearing date the \_\_\_\_\_ day of \_\_\_\_\_,  
 \_\_\_\_\_, and all my estate, title, and interest  
 therein, to hold the same unto the said C.D. in perpetuity  
 [*or, as the case may be, for the remainder of the period*  
*for which the same was granted by the said authority*]  
 subject to the conditions on which I held the same  
 immediately before the execution hereof.<sup>2</sup>

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_

### Registration of Assignments.

Assignments by deed and the probate of wills bequeathing an exclusive right of burial must be produced to the clerk of the cemetery authority within *six months* of the execution of the deed or grant of probate, as the case may be, for the purpose of an entry or memorial being made in the register of assignments.<sup>3</sup> The entry

<sup>1</sup> Forms of Transfer of Private Graves are printed by Shaw & Sons Ltd., under Cat. No. BUR 16A.

<sup>2</sup> For the desirability of inserting here an appropriate Certificate of Value for stamp duty purposes, *see* footnote<sup>3</sup>, p. 62, *supra*.

<sup>3</sup> Registers of Transfers of Private Graves are printed by Shaw & Sons Ltd., under Cat. No. BUR 16.



or memorial must be in the same manner as that of the original grant, and it is expressly provided that **until such entry or memorial, no right of burial shall be acquired** under the deed or will respectively.<sup>1</sup> In respect of each entry or memorial, the clerk of the cemetery authority is entitled to demand such sum as the authority think fit, not exceeding the prescribed sum, or if no sum is prescribed, the sum of 2/6d.<sup>1</sup>

### MONUMENTS AND MONUMENTAL INSCRIPTIONS.

Cemetery authorities are empowered by **section 50 of the Cemeteries Clauses Act, 1847**, to take down and remove any gravestone, monument, tablet, or monumental inscription<sup>2</sup> which shall have been placed within the cemetery without their authority.

As regards the rights of the bishop to object to monumental inscriptions in the consecrated part of cemeteries, **section 51** of the 1847 Act provides:—

The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription<sup>2</sup> within the consecrated part of the cemetery as he by law has to object to or procure the removal of any monumental inscription<sup>2</sup> in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

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<sup>1</sup> Cemeteries Clauses Act, 1847, ss. 46 and 47.

<sup>2</sup> For the meaning and significance of the expression "monumental inscription", see *Twyford v. Manchester Corporation*, [1946] Ch. 236, *supra*, Chapter 2, p. 33.



## OFFENCES REGARDING DAMAGE, DISTURBANCE AND NUISANCE IN CEMETERIES.

Under sections 58 and 59 of the **Cemeteries Clauses Act, 1847**,<sup>1</sup> the following offences are each punishable by a penalty<sup>2</sup> not exceeding **FIVE POUNDS [£5]**<sup>3</sup>:—

1. wilful destruction of or injury to any building, wall or fence belonging to the cemetery;
2. destruction or injury to any tree or plant in the cemetery;
3. daubing or disfiguring any wall of the cemetery;
4. putting up any bill in, or on any wall of, the cemetery;
5. wilful destruction, injury, or defacement of any monument, tablet, inscription, or gravestone within the cemetery;
6. wilful damage of any other kind;
7. playing any game or sport in the cemetery;
8. discharging firearms, except at a military funeral, in the cemetery;
9. wilful and unlawful disturbance of any persons assembled in the cemetery for the purpose of burying any body therein; and,
10. committing any nuisance within the cemetery.

## PREVENTION OF NUISANCES FROM A CEMETERY.

### Requirements and Powers as to the Drainage of Cemeteries.

In order to prevent a cemetery from becoming a nuisance, **section 18 of the Cemeteries Clauses Act, 1847**,

<sup>1</sup> For the authoritative wording of these provisions and their application to burial grounds provided under the Burial Acts 1852 to 1906, see Chapter 2, pp. 40 and 41, *supra*. As enacted in the Cemeteries Clauses Act, 1847, the word "cemetery" is used and not the expression "burial ground".

<sup>2</sup> Formerly, penalties were recoverable by the cemetery authority for their own purposes, but under ss. 27 (1) and 46 (2) of, and Part III of the Seventh Schedule to, the Justices of the Peace Act, 1949, they are now payable into public funds.

<sup>3</sup> Heads 1 to 6 inclusive, relating to damage, fall within s. 58 of the 1847 Act, and heads 7 to 10, relating to disturbance and nuisance, within s. 59.



provides that cemetery authorities shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

**Penalty and Damages where Water is Polluted.**

By section 20 of the Cemeteries Clauses Act, 1847, if a cemetery authority at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of **FIFTY POUNDS** [£50].

It is interesting to note that the above penalty and costs may be recovered, under section 21, by an action brought by any person having right to use the water fouled by such offensive matter, provided that the penalty is sued for during the continuance of the offence, or within six months after it has ceased.

Moreover, in addition to the penalty of *fifty pounds* and whether it is in fact recovered or not, section 22 enables any person, who has a right to use the water which has been fouled by offensive matter from a cemetery, to recover any damage specially sustained by him by reason of the water being so fouled; or if no special damage is alleged, he may recover a sum of **TEN POUNDS** for each day during which the offence continues after the expiration of *twenty-four hours* from the time when notice of an offence has been served by him on the cemetery authority.



## CHAPTER 4

### RIGHTS AND RESPONSIBILITIES AS TO THE BODY OF A DECEASED PERSON AND IN REGARD TO FUNERAL ARRANGEMENTS AND EXPENSES.

#### 1.—RIGHTS AND RESPONSIBILITIES OF EXECUTORS AND OTHERS AS TO THE BODY OF A DECEASED PERSON.

#### NO PROPERTY IN A DEAD BODY BUT EXECU- TORS HAVE CERTAIN RIGHTS TO POSSES- SION PENDING DISPOSAL.

In *R. v. Sharpe*,<sup>1</sup> it was **held** that the law does not recognise any *property* in a dead body and that any unauthorised disinterment, even from unconsecrated ground and for justifiable motives, is a common law misdemeanour. Although there can normally<sup>2</sup> be no proprietary right in a corpse, the deceased's *executors* nevertheless have a right both to *possession* and custody of the body prior to its disposal. Thus, in *R. v. Fox*,<sup>3</sup> mandamus was issued commanding the governor of a prison to deliver up to the executors the body of a person who had died in prison, there being no lien on the body for debts that had been incurred. Moreover, in *R. v. Cundick*,<sup>4</sup> the sale of the body of an executed convict for dissection

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<sup>1</sup> (1857), Dears. & B. 160.

<sup>2</sup> The case of a mummy would, of course, be exceptional.

<sup>3</sup> (1841), 2 Q.B. 246.

<sup>4</sup> (1822), Dow. & Ry. N.P. 13.



purposes, where dissection was not part of the sentence, was **held** to be an indictable common law misdemeanour. Similarly, in *R. v. Scott*,<sup>1</sup> a gaoler was **held** guilty of an offence for refusing to deliver the body of a deceased prisoner to his executors on their request, and in *R. v. Young*,<sup>2</sup> the master of a workhouse, together with a surgeon and another person, were all **held** guilty of conspiracy where they had arranged for the body of a deceased inmate to be dissected.

Because there is no property in a dead body, it cannot be the subject of larceny; but, since a corpse is incapable of owning anything, it was **held** in *Haynes' Case*<sup>3</sup> that the shroud in which a body is wrapped still remains the property of the person who owned it before the body was buried, and, therefore, a person may be guilty of stealing a shroud provided the true owner is referred to in the indictment.

### **RESTRICTIONS IN THE INTERESTS OF PUBLIC HEALTH.**

It is important to note that the rights of executors and others regarding the bodies of deceased persons are expressly limited, in the interests of public health, by the provisions contained in **sections 162 to 165 of the Public Health Act, 1936**, and in **sections 208 to 210 of the Public Health (London) Act, 1936**. These provisions principally concern the death of persons suffering from a notifiable or dangerous infectious disease and may be summarised as follows.

#### **Power of a Justice of the Peace to Order a Dead Body to be Removed to a Mortuary or Buried Forthwith.**

Under **section 162 (1) of the Public Health Act, 1936**,<sup>4</sup> a Justice of the Peace may order a dead body to be removed to a mortuary, or buried forthwith, provided he is

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<sup>1</sup> (1842), 2 Q.B. 248, n.

<sup>2</sup> (1784), 4 Wentworth's Pleadings 219.

<sup>3</sup> (1613), 12 Co. Rep. 113.

<sup>4</sup> As regards London, see Public Health (London) Act, 1936, s. 235.



satisfied, on a certificate of the Medical Officer of Health of the district in which the body lies, that its retention in any building would **endanger the health of the inmates of that building, or of any adjoining or neighbouring building.**

#### **Restrictions in Certain Cases on the Removal of Persons Dying in Hospital.**

Where a person dies in hospital while suffering from a notifiable disease, **section 163 (1) of the Public Health Act, 1936,**<sup>1</sup> empowers the Medical Officer of Health of the district, or some other registered medical practitioner, to prohibit the removal of the body from the hospital **except for the purpose of being taken direct to a mortuary or being forthwith buried or cremated.** Contravention of such a restriction is punishable by a fine not exceeding **FIVE POUNDS [£5].**<sup>2</sup>

#### **Avoidance of Contact with the Body of a Person Dying While Suffering from a Notifiable Disease.**

**Section 164 of the Public Health Act, 1936, provides**<sup>3</sup>:—

Every person having the charge or control of premises in which is lying the body of a person who has died while suffering from a notifiable disease shall take such steps as may be reasonably practicable to prevent persons coming unnecessarily into contact with, or proximity to, the body, and, if he fails to do so, shall be liable to a fine not exceeding **FIVE POUNDS [£5].**

#### **Prohibition of Wake over the Body of a Person who Suffered from a Notifiable Disease.**

**By section 165 of the Public Health Act, 1936:—**

**It shall not be lawful to hold wake over the body of a person who has died while suffering from a notifiable**

<sup>1</sup> As regards London, *see* Public Health (London) Act, 1936, s. 210.

<sup>2</sup> Public Health Act, 1936, s. 163 (3). Under the corresponding provision for London, however, the maximum fine is *ten pounds* [£10]: *see* s. 210 (1) of the Public Health (London) Act, 1936.

<sup>3</sup> For a similar provision regarding London, *see* s. 208 of the Public Health (London) Act, 1936.



disease, and the occupier of any premises who permits or suffers any such wake to take place thereon, and every person who takes part in the wake, shall be liable to a fine not exceeding FIVE POUNDS [£5].

## POSITION REGARDING THE USE AND DISPOSAL OF A BODY AFTER DEATH.

### GENERAL POSITION AT COMMON LAW.

In *Williams v. Williams*,<sup>1</sup> it was held that since a person has no property in his body after death, any directions in a will or other instrument regarding the disposal of his body *cannot* be binding upon his executors. Thus, in that case, the executors were *not* liable to repay to the deceased's friend the cost of removing his body from unconsecrated ground and of cremating it in Italy, even though the will of the deceased had expressly requested the friend to cremate his body and had directed the executors to repay the expenses incurred.

### POSITION UNDER STATUTE LAW.

#### Directions or Nominations by Persons as to Anatomical Examination after Death and the Overriding Powers of a Spouse or Near Relatives.

By section 8 of the Anatomy Act, 1832:—

If any person, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, shall direct that his body after death be examined anatomically, or shall nominate any party by this Act authorized<sup>2</sup> to examine bodies anatomically to make such examination, and if, before the burial of the body of such person, such direction or nomination shall be made known to

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<sup>1</sup> (1882), 20 Ch. D. 659.

<sup>2</sup> *I.e.*, any *duly licensed* Fellow or Member of any College of Physicians or Surgeons, graduate or licentiate in medicine, person lawfully qualified to practise medicine in any part of the United Kingdom, professor or teacher of anatomy, medicine, or surgery, or student attending any school of anatomy: Anatomy Act, 1832, s. 1.



the party having lawful possession of the dead body, then such last-mentioned party shall direct such examination to be made, and in case of any such nomination as aforesaid, shall request and permit any party so authorized and nominated as aforesaid to make such examination **UNLESS** the deceased person's surviving husband or wife, or nearest known relatives, being of kin in the same degree, shall require the body to be interred without such examination.

**Anatomical Examination Authorized by a Person having Lawful Custody of a Body Subject to the Expressed Desire of the Deceased and to the Overriding Powers of the Spouse or Known Relatives.**

Under section 7 of the Anatomy Act, 1832:—

It shall be lawful for any executor or other party having lawful possession of the body of any deceased person, and not being an undertaker or other party entrusted with the body for the purpose only of interment, to permit the body of such deceased person to undergo anatomical examination, **UNLESS**, to the knowledge of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, that his body after death might not undergo such examination, **OR UNLESS** the surviving husband or wife, or **ANY** known relative of the deceased person, shall require the body to be interred without such examination.

In regard to the above provision, it must be emphasised that it is essential for the spouse or relatives actually to *require* the body to be buried without an anatomical examination if they wish to prevent such an examination. For example, in *R. v. Feist*,<sup>1</sup> the mere fact that the relatives had refrained from making such a requirement because

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<sup>1</sup> (1858), Dears. & B. 590.



they had been deliberately deceived into believing that the bodies would be buried without dissection was **held** to be immaterial. Since the requirement had not *in fact* been made, the disposal of the bodies for dissection purposes was nevertheless lawful under **section 7** above.

### **Use of Eyes of Deceased Persons for Therapeutic Purposes.**

The **Corneal Grafting Act, 1952**, contains important provisions and safeguards regarding the use of eyes of deceased persons for the relief of blindness in others. **Section 1 (1)** provides:—

If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his eyes be used for therapeutic purposes after his death, the party lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorize the removal of the eyes from the body for use for those purposes.

Under **section 1 (2)**, apart altogether from a *request* of the deceased person, the party lawfully in possession of the body may authorize the removal of eyes for the above purposes, unless he has reason to believe:—

- (a) that the deceased had expressed an objection to his eyes being so dealt with after his death, and had not withdrawn it; or
- (b) that the surviving spouse or any surviving relative of the deceased objects to the deceased's eyes being so dealt with.

By **section 1 (3)**, the removal of eyes from a body must be effected by a **registered medical practitioner**, who must have satisfied himself by a personal examination of the body that life is extinct.



Authority for the removal of eyes must not be given if an inquest is likely,<sup>1</sup> and a person who is merely entrusted with the body **for the purpose only of its interment or cremation** is prohibited from giving any such authority.<sup>2</sup>

In the case of a body lying in hospital, **section 1 (6)** provides that authority for the removal of eyes **may be given on behalf of the person having control and management of the hospital by any officer or person designated in that behalf by the first-mentioned person.**

### **Effect of a Written Direction Prohibiting Cremation.**

*Regulation 4* of the **Cremation Regulations, 1930**,<sup>3</sup> provides that it shall not be lawful to cremate the remains of any person who is known to have left a written direction to the contrary.

## **2.—RIGHTS AND RESPONSIBILITIES OF EXECUTORS AND OTHERS IN REGARD TO FUNERAL ARRANGEMENTS AND EXPENSES.**

### **GENERAL PRINCIPLES.**

The primary responsibility for the disposal of the dead falls upon executors, who are accordingly entitled to recover from the deceased's estate their reasonable and proper funeral expenses.

In *Rees v. Hughes*,<sup>4</sup> the position at common law was summarised by Tucker, L.J., as follows<sup>5</sup>:—

“ It has long been well settled that where a man dies possessed of property his funeral expenses must come out of that property. In Blackstone's Commentaries, Bk. 2, ch. 32, p. 508, dealing with the powers and duties

<sup>1</sup> Corneal Grafting Act, 1952, s. 1 (4). In Scotland, there must be no removal of eyes where the procurator fiscal has objected: *ibid.*, s. 1 (8).

<sup>2</sup> *Ibid.*, s. 1 (5).

<sup>3</sup> S.R. & O. 1930, No. 1016.

<sup>4</sup> [1946] 1 K.B. 517.

<sup>5</sup> *Ibid.*, at p. 528.



of an executor, it is said: 'He must bury the deceased in a manner suitable to the estate which he leaves behind. Necessary funeral expenses are allowed, previous to all other debts and charges.' See also *Edwards v. Edwards*,<sup>1</sup> where Parke, B., said: 'I take the rule to be, that the executor is entitled to be allowed reasonable expenses, and if he exceeds those he is to take the chance of the estate turning out insolvent.' In *Tugwell v. Heyman*,<sup>2</sup> and *Rogers v. Price*<sup>3</sup> it was held that executors with assets in their hands were liable for payment of funeral expenses even where they had not ordered the funeral. And this was stated to be the law by Sir George Jessel, M.R., in *Sharp v. Lush*<sup>4</sup>."

Where the estate of a deceased person is solvent, **section 34 (3) of the Administration of Estates Act, 1925**, now provides that it shall, *inter alia*, be applicable towards the discharge of the funeral, testamentary and administration expenses. This obligation cannot be evaded so as to defeat creditors by any provisions in the will, because under **section 32 (1)**, any disposition by will inconsistent with this enactment is void as against creditors.

In the case of a person dying intestate, **section 33 (1) and (2) of the Administration of Estates Act, 1925**, provides that the personal representatives shall hold the estate upon trust for sale, and pay, *inter alia*, the funeral, testamentary and administration expenses out of the net proceeds of sale and the ready money of the deceased.

If an estate is insolvent, the funeral, testamentary, and administration expenses have priority<sup>5</sup>.

By **section 9 of the Cremation Act, 1902**, expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of the deceased.

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<sup>1</sup> (1834), 2 Cr. & M. 612.

<sup>2</sup> (1812), 3 Camp. 298.

<sup>3</sup> (1829), 3 Y. & J. 28.

<sup>4</sup> (1879), 10 Ch. D. 472.

<sup>5</sup> Administration of Estates Act, 1925, s. 34 (1) and the First Schedule, Part I, rule 1.



## POSITION WHERE EXECUTORS NEGLECT TO MAKE FUNERAL ARRANGEMENTS.

Where executors neglected to arrange for the funeral of a testator, it was **held**, in *Tugwell v. Heyman*<sup>1</sup> and in *Rogers v. Price*<sup>2</sup> that they were liable upon an *implied* promise to repay out of the deceased's estate the expenses incurred by the plaintiff in arranging a funeral suitable to the testator's position in life and circumstances.

The reason why executors are held liable in such cases is to encourage others to dispose of the dead with the knowledge that they can look to the executors for repayment of the expenses incurred. It should be observed, however, that the person who actually orders a funeral is contractually liable to the funeral director.<sup>3</sup>

## POSSIBLE PERSONAL LIABILITY OF AN EXECUTOR FOR FUNERAL EXPENSES.

In *Sharp v. Lush*,<sup>4</sup> it was considered that since an executor has an official duty to dispose of the deceased, he is *personally* liable to pay the funeral expenses even where the assets are insufficient and he has not ordered the funeral.

In *Brice v. Wilson*,<sup>5</sup> it was **held** that an executor who had ordered a funeral was *personally* liable to the funeral director for all the fair and reasonable expenses of it, notwithstanding that the funeral might be of a more expensive type than was suitable to the circumstances of the deceased.

As against a creditor, an executor is only allowed an amount for funeral expenses which is *reasonably* necessary

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<sup>1</sup> (1812), 3 Camp. 298, N.P.

<sup>2</sup> (1829), 3 Y. & J. 28.

<sup>3</sup> *Green v. Salmon* (1838), 8 Ad. & El. 348; *In the Goods of Fowler* (1852), 16 Jur. 894.

<sup>4</sup> (1879), 10 Ch. D. 468.

<sup>5</sup> (1834), 8 Ad. & El. 349 n.



according to the circumstances and position in life of the deceased. Any excess will have to be borne by the executor *personally*, provided, of course, he was responsible for the funeral arrangements.

The common law rule that executors are not allowed to incur unnecessary funeral expenses *at the expense of creditors* may be illustrated by the following cases:—

(i) *Hancock v. Podmore*.<sup>1</sup>

In the case of an Army captain who was on half-pay at the time of his death, the court **held** that £79 was too much and suggested that £20 would have been reasonable.

(ii) *Bissett v. Antrobus*.<sup>2</sup>

Where a nobleman's estate ultimately proved to be insolvent, the court *refused* to allow £2,210 for funeral expenses, even though he was believed to be solvent at his death.

(iii) *Reeves v. Ward*.<sup>3</sup>

On the death of a small tradesman, £10 was **held** to be reasonable.

(iv) *Yardley v. Arnold*.<sup>4</sup>

**Held:** £20 was the normal allowance for funeral expenses in the case of an insolvent estate.

Even where a person dies with considerable assets, care must be taken by personal representatives not to incur unreasonable funeral expenses. For example, in *Stacpoole v. Stacpoole*,<sup>5</sup> the personal estate of the deceased amounted to £31,473, and it was **held** that £200 was sufficient for his funeral. The *actual* cost of the funeral had been £1,200, and the difference of £1,000 was accordingly disallowed on the ground of extravagance.

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<sup>1</sup> (1830), 1 B. & Ad. 260.

<sup>2</sup> (1831), 4 Sim. 512.

<sup>3</sup> (1835), 1 Hodg. 300.

<sup>4</sup> (1842), Car. & M. 434, N.P.

<sup>5</sup> (1816), 4 Dow. 209.



**PERSONAL REPRESENTATIVES, NOT HUSBAND,  
NORMALLY LIABLE FOR FUNERAL EXPEN-  
SES ON THE DEATH OF A MARRIED  
WOMAN.**

In *Rees v. Hughes*,<sup>1</sup> the Court of Appeal held that the combined effect of the **Married Women's Property Act, 1882**,<sup>2</sup> the **Administration of Estates Act, 1925**,<sup>3</sup> and the **Law Reform (Married Women and Tortfeasors) Act, 1935**,<sup>4</sup> is to put married women, as regards the ownership and disposition of property, in the same position as *femes sole* or men, and where a married woman dies with property sufficient to meet her funeral expenses her husband is accordingly no longer responsible for them merely by reason of being a husband.<sup>5</sup>

Scott, L.J., observed<sup>6</sup>:—

“There is an obligation at common law in the nature of a public duty, which rests on certain persons in whose possession a dead body may be—a husband being one—to bury it. And at common law, before modern legislation about married women, if a woman died covert, her husband was bound to discharge that duty, at his own expense, up to a reasonable amount, no doubt varying with his position in the world. So fundamental was his obligation that even a stranger, who as a volunteer carried out the funeral and burial of the dead wife at his own expense, was entitled to recover the amount (up to that reasonable limit) from the husband.<sup>7</sup> . . . . But, . . . that position has been completely changed by legislation. The very foundation of the duty, the

<sup>1</sup> [1946] K.B. 517.

<sup>2</sup> S. 1, now repealed and replaced by s. 1 of the Law Reform (Married Women and Tortfeasors) Act, 1935.

<sup>3</sup> Ss. 32, 33, 34, 45 and 46.

<sup>4</sup> Ss. 1 and 2.

<sup>5</sup> In the light of the general position at common law as expressed in the following observations of Scott, L.J., it would appear that a husband will still be liable for funeral expenses where his wife leaves no, or insufficient, estate. See also, National Assistance Act, 1948, s. 50 (1) and (4), *infra*, pp. 80 and 81.

<sup>6</sup> [1946] K.B. 517, at p. 523.

<sup>7</sup> For cases establishing this former principle, see *Jenkins v. Tucker* (1788), 1 Hy. Bl. 90; *Ambrose v. Kerrison* (1851), 10 C.B. 776, and *Bradshaw v. Beard* (1862), 12 C.B. (N.S.) 344.



foundation which gave rise to the common law doctrine, has completely gone, and has taken with it the superstructure which the common law had erected on it."

After referring to the relevant provisions of the three statutes of 1882, 1925 and 1935, it was emphasised<sup>1</sup> that for all questions of rights or liabilities relating to property of any kind there should, in future, be no difference whatever between the position of a married woman, a *feme sole*, or a man. Scott, L.J., then continued<sup>2</sup>:—

"This being the effect of the express language of the three statutes, all the original reasons, which made the common law put on the husband the public duty of burying his deceased wife, have wholly ceased to operate. The contention of the defendant is that, if the wife is to be treated as a *feme sole*, the duty of burying her in that capacity necessarily falls on her personal representatives, to exactly the same extent and for the same reasons as on the death of her husband it is the duty of his personal representatives to bury him. That contention is in my opinion well founded, as resting on an express provision of statute law . . . . The legislation about married women has thus caused the law requiring the husband to bury his dead wife to cease—at any rate, where she leaves assets, as in the present case."

### RECOVERY OF FUNERAL EXPENSES WHERE THE DECEASED HAS BEEN KILLED.

By section 1 (2) (c) of the Law Reform (Miscellaneous Provisions) Act, 1934, where the death of a person has been caused by any act or omission which gives rise to a cause of action, the damages recoverable for the benefit of the *estate of the deceased* may include a **sum in respect of funeral expenses**.

In *Hart v. Griffith-Jones*,<sup>3</sup> a child, aged four, had been killed in an accident due to the negligence of the defendant, and, in an action by the father as administrator of the

<sup>1</sup> [1946] K.B. 517, at p. 525.

<sup>2</sup> *Ibid.*, at pp. 525 and 526.

<sup>3</sup> [1948] 2 All E.R. 729.



estate of his child, it was **held**, *inter alia*, that the cost of embalming the body was recoverable as "funeral expenses", but *not* a sum of £225 for the erection of a monument.

Streatfield, J., said<sup>1</sup>:—

"One other matter I have to consider—the funeral expenses which were claimed at the figure of £39 16s. 0d. Part of that account is for the embalming of the body, and it has been suggested that that is an extravagance which should not be included in funeral expenses. I do not take that view. I think that the parents of a child who has been killed are not acting unreasonably if they have the body embalmed, and so I award the full amount of £39 16s. 0d. as claimed under the head of funeral expenses.

By way of amendment a sum of £225 was added to the plaintiff's claim in respect of the cost of a monument to be erected over the grave of this child. It is not for me to pass judgment on people's views in spending sums on monuments over graves, although I cannot help thinking that a greater duty is owed to the living than to the dead. But I am clear that this sum is irrecoverable as funeral expenses under the Law Reform Act. . . .

I have to be guided by what is reasonable. In any view, in the circumstances of this case it is wholly unreasonable when a child has been killed to expect the negligent party to pay £225 towards the erection of a monument. . . . I, therefore, disallow that claim completely."

As regards claims under the **Fatal Accidents Acts, 1846 to 1908**, for pecuniary loss by the *dependants* of a person whose death has been caused by the wrongful act, neglect or default of another, **section 2 (3) of the Law Reform (Miscellaneous Provisions) Act, 1934**, now provides that **damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.**

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<sup>1</sup> *Ibid.*, at pp. 730 and 731.



Previous to the 1934 Act, it had been **held** in *Clark v. London General Omnibus Co. Ltd.*,<sup>1</sup> that a father could *not* recover, either at common law or under the **Fatal Accidents Act, 1846**, the cost of the funeral expenses incurred by him in respect of the burial of his unmarried daughter who was under 21 and had been killed by the negligence of the defendants' servant. In *Jackson v. Watson & Sons*,<sup>2</sup> however, funeral expenses amounting to £29 13s. were recoverable where the plaintiff's wife had died as a result of eating tinned salmon sold by the defendants to the plaintiff. In the latter case, the action was *not* brought under the **Fatal Accidents Act, 1846**, but was for damages for breach of an implied warranty arising under **section 14 (1) of the Sale of Goods Act, 1893**.

#### STATUTORY RIGHTS AND RESPONSIBILITIES OF PUBLIC AUTHORITIES REGARDING FUNERAL ARRANGEMENTS.

##### Position Under the National Assistance Act, 1948.

By **section 50 (1) and (2) of the National Assistance Act, 1948**, councils of county boroughs and county districts, and, in London, metropolitan borough councils, the Common Council of the City of London and the authorities of the Inner and Middle Temples, *must cause to be buried or cremated the body of any person who has died or been found dead in their area, in any case where it appears to the authority that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the authority.*<sup>3</sup>

Similarly, county and county borough councils *may* cause to be buried or cremated the body of any deceased person who immediately before his death was *either* being provided with accommodation under Part III<sup>4</sup>

<sup>1</sup> [1906] 2 K.B. 648.

<sup>2</sup> [1909] 2 K.B. 193.

<sup>3</sup> National Assistance Act, 1948, s. 50 (1).

<sup>4</sup> Ss. 21 to 36, inclusive.



of the **National Assistance Act, 1948**, as a person in need of care and attention, *or* with hostel facilities as a blind, deaf, dumb or crippled person.<sup>1</sup>

In any of the above cases, the local authority may recover their expenses from the estate of the deceased person, or from a spouse, or a parent in the case of a child under *sixteen*, in so far as they are not reimbursed out of any portion of a death grant which may be payable.<sup>2</sup>

Where a death grant is payable out of the National Insurance Fund,<sup>3</sup> the Minister of National Insurance is empowered to pay a *part* of it to any local authority which has had to make arrangements for the disposal of a body under **section 50 (1) and (3) of the National Assistance Act, 1948**, above.<sup>4</sup> At the present time, *Regulation 11 (1) of the National Insurance (Death Grant) Regulations, 1949*,<sup>5</sup> provides that not more than *three-fifths* of the grant may be so paid.

It is important to note that **section 50 (6) of the 1948 Act** expressly provides that **an authority shall not cause a body to be cremated under this section where they have reason to believe that cremation would be contrary to the wishes of the deceased.**

#### **Position Under the Children Act, 1948.**

In the case of children, **section 18 (1) of the Children Act, 1948**, provides:—

**A local authority<sup>6</sup> may cause to be buried or cremated the body of any deceased child<sup>7</sup> who immediately before his death was in the care of the authority:**

<sup>1</sup> National Assistance Act, 1948, s. 50 (3).

<sup>2</sup> National Assistance Act, 1948, s. 50 (4), s. 42 (1) and s. 64 (1).

<sup>3</sup> For the circumstances in which death grants are payable, *see* s. 22 of the National Insurance Act, 1946.

<sup>4</sup> National Assistance Act, 1948, s. 50 (5).

<sup>5</sup> S.I. 1949 No. 1204.

<sup>6</sup> Defined by s. 38 (1) of the Children Act, 1948, as the council of a county or county borough.

<sup>7</sup> By s. 59 (1), "child" means a person under the age of *eighteen* years.



**Provided that the authority shall not cause the body to be cremated where cremation is not in accordance with the practice of the child's religious persuasion.**

In the case of children under *sixteen*, the local authority are empowered to recover their expenses from any parent in so far as they are not reimbursed out of any portion of a death grant which may be payable.<sup>1</sup>

#### **Position Under Other Statutes.**

By section 25 (1) of the Local Government Superannuation Act, 1953, the funeral expenses of a local government employee may, in certain circumstances, be paid out of moneys due to him from the appropriate Superannuation Fund.

Finally, section 162 of the Public Health Act, 1936, and section 235 of the Public Health (London) Act, 1936, contain appropriate powers for the *burial* by public authorities of bodies in the interests of public health, especially where a person has died while suffering from a notifiable or dangerous infectious disease.<sup>2</sup> Any expenses reasonably incurred in such a case may be recovered from any person legally liable to pay the expenses of the burial.<sup>3</sup>

### **GENERAL NATURE AND EFFECT OF CONTRACTS WITH FUNERAL DIRECTORS.**

In *Vigers v. Cook*,<sup>4</sup> the Court of Appeal held that a contract with a funeral director was one entire contract for one entire price; and since an essential term, namely that the coffin was to be taken into a certain church for part of the funeral service to be read over the body,

<sup>1</sup> Children Act, 1948, s. 18 (2); National Insurance Act, 1946, s. 22 (5).

<sup>2</sup> Note, however, the more general duty now imposed by s. 50 (1) of the National Assistance Act, 1948, *supra*, p. 80.

<sup>3</sup> Public Health Act, 1936, s. 162 (2); Public Health (London) Act, 1936, s. 235 (2).

<sup>4</sup> [1919] 2 K.B. 475.



had not been carried out, the funeral director was *not* entitled to recover *anything* in respect of either the estimated or actual cost of the funeral, except a *separately agreed* amount for carriages for the conveyance of the relatives.

Bankes, L.J., said<sup>1</sup>:—

“Undertaking an order for a funeral indicates not a single but a complex operation, that is to say, a series of single operations; and naturally there must have been a discussion in reference to these various single operations which went to make up the entire transaction in respect of which the contract was made. For instance, there must have been an intimation as to where the interment was to take place, and as to the kind of coffin desired; and there must have been many other points discussed and decided upon before the contract which is expressed in this compendious phrase as ‘giving the order for the funeral’ was concluded. But, having been concluded, in my opinion it is one entire contract. . . .

In my opinion the contract which was made between the parties included . . . as an essential term the conveying of the body into the church for a part of the service, subject to this condition, that the body was in such a state as to permit of that being done. The body in this coffin was not in that state, but the onus was on the plaintiff to establish that it was not in that state owing to no default on his part. In my opinion he did not discharge that onus . . . he has not shown that it was owing to no fault on his part that one essential term of his contract was not fulfilled; and it being one entire contract, in my opinion he fails in proving that he is entitled to any portion of the one entire price which was payable for the entire contract.”

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<sup>1</sup> *Ibid.*, at pp. 481 to 483.



## CHAPTER 5

### REGISTRATION OF DEATHS AND STILL-BIRTHS AND DISPOSAL PROCEDURE GENERALLY.

#### 1.—OBLIGATIONS AND PROCEDURE REGARDING THE REGISTRATION OF DEATHS AND STILL-BIRTHS.

#### DUTY TO REGISTER PARTICULARS OF ALL DEATHS AND STILL-BIRTHS IN ENGLAND AND WALES.

##### Position as to Deaths.

Section 15 of the Births and Deaths Registration Act, 1953, provides that the death of every person dying in England and Wales and the cause thereof shall be registered by the registrar of births and deaths for the sub-district in which the death occurred by entering in a register kept for that sub-district such particulars concerning the death as may be prescribed:

Provided that where a dead body is found and no information as to the place of death is available, the death shall be registered by the registrar of births and deaths for the sub-district in which the body is found.

By section 20 of the Births and Deaths Registration Act, 1953, registration of death must be in the prescribed form and manner without any fee or reward, except that a fee of 1s. 6d. is to be paid where the Registrar, in pursuance of a written request, registers a death (a) at the residence of the person making the request, or (b) at the house where the deceased died.

In the case of *deaths*, Part IX<sup>1</sup> of the **Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954**,<sup>2</sup> requires particulars of the following matters to be registered<sup>3</sup>;—

1. Date and Place of Death (*Regulation 71*).
2. Name and Surname of Deceased (*Regulation 72*).
3. Sex (*Regulation 73*).
4. Age (*Regulation 74*).
5. Occupation (*Regulation 75*).
6. Cause of Death (*Regulation 77*).
7. Signature, Description and Residence of Informant (*Regulation 78*).
8. Date of Registration (*Regulation 79*).
9. Signature of Registrar (*Regulation 81*).

Where a death is reported to the Coroner, *Regulations 82 to 86* contain the appropriate provisions regarding the particulars to be entered under the above nine heads.

### Position as to Still-Births.

In the case of *still-births*,<sup>4</sup> Part VII<sup>5</sup> of the 1954 Regulations requires particulars of the following matters to be registered<sup>6</sup>:—

1. Date and Place of Still-birth (*Regulations 56 and 22*).

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<sup>1</sup> Regulations 68 to 78, inclusive.

<sup>2</sup> S.I. 1954 No. 1596.

<sup>3</sup> For the appropriate Form of Registration of Death, *see* the Registration (Births, Still-Births and Deaths) (Prescription of Forms) Regulations, 1953, S.I. 1953 No. 1347, *Regulation 9* and Ninth Schedule.

<sup>4</sup> "Still-born child" means a child which has issued forth from its mother after the *twenty-eighth* week of pregnancy and which did not at any time after being completely expelled from its mother breathe or show any other signs of life, and the expression "still-birth" is to be construed accordingly: Births and Deaths Registration Act, 1953, s. 41. For the special provisions relating to the registration of still-births, *see* ss. 1, 2, 5 and 11 of the 1953 Act.

<sup>5</sup> Regulations 52 to 66, inclusive.

<sup>6</sup> For the appropriate Form of Registration of Still-Births, *see* the Registration (Births, Still-Births and Deaths) (Prescription of Forms) Regulations, 1953, S.I. 1953 No. 1347, *Regulation 3* and Second Schedule.



2. Sex of Child (*Regulations 56 and 24*).
3. Name and Surname of Father (*Regulations 56 and 25*).
4. Name, Surname, and Maiden Name of Mother (*Regulations 56 and 26*).
5. Occupation of Father (*Regulations 56 and 27*).
6. Signature, Description and Residence of Informant (*Regulation 58*).
7. Date of Registration (*Regulation 59*).
8. Nature of Evidence upon which the Still-birth is Registered (*Regulation 60*).
9. Signature of Registrar (*Regulation 62*).

Special provisions are contained in *Regulations 64 to 66* regarding details of the entries to be made under the above heads where a Registrar has reported an alleged still-birth to the Coroner under *Regulation 63* on the ground that there is reason to believe that the child was born alive.

### **Offences and Penalties for Refusing or Omitting to Register a Death and for Forging or Destroying a Register of Deaths.**

By section 35 of the Births and Deaths Registration Act, 1953, it is an offence punishable on summary conviction by a fine not exceeding **FIFTY POUNDS [£50]** for any Registrar to refuse, or without reasonable cause to omit, to register any death or particulars concerning which information has been duly tendered to him.

Under section 3 (2) (a) of the Forgery Act, 1913,<sup>1</sup> it is a felony, punishable by imprisonment not exceeding **FOURTEEN YEARS**,<sup>2</sup> to forge, with intent to defraud or deceive, any register or record of deaths which is authorized or required by law to be kept, or any part or certified copy of such a register.

<sup>1</sup> As amended by s. 1 (1) of the Criminal Justice Act, 1948.

<sup>2</sup> A fine may now be imposed in lieu of or in addition to imprisonment: Criminal Justice Act, 1948, s. 13.



Moreover, by section 36 of the Forgery Act, 1861,<sup>1</sup> it is a felony punishable with imprisonment **FOR LIFE**<sup>2</sup> for any person unlawfully to destroy, deface, injure or falsify any register of deaths or any part or certified copy thereof.

### **DUTY OF PERSONS TO NOTIFY DEATHS TO THE REGISTRAR.<sup>3</sup>**

#### **Position where a Person Dies in a House.**

By section 16 (2) of the Births and Deaths Registration Act, 1953, the following persons are qualified to give information concerning a death in a house:—

- (a) any relative of the deceased person present at the death or in attendance during his last illness;
- (b) any other relative of the deceased residing or being in the sub-district where the death occurred;
- (c) any person present at the death;
- (d) the occupier of the house if he knew of the happening of the death;
- (e) any inmate of the house who knew of the happening of the death;
- (f) the person causing the disposal of the body.

Under section 16 (3), it is the duty of one of the above persons, in the order as set out, to give to the registrar, before the expiration of **FIVE DAYS** from the date of the death, information to the best of his knowledge and belief of the particulars required to be registered concerning the death, and in the presence of the registrar to sign the register.

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<sup>1</sup> For the relevant wording of this provision, see Chapter 6, pp. 115 and 116, *infra*.

<sup>2</sup> See footnote 2 p. 86, *supra*.

<sup>3</sup> By s. 41 of the Births and Deaths Registration Act, 1953, "registrar" in relation to any death means the Registrar of Births and Deaths for the sub-district in which the death takes place or, where a dead body is found and no information as to the place of death is available, for the sub-district in which the dead body is found.



If, however, within *five days* of a death, a qualified informant has sent a written Notification of the death to the Registrar *together with* the appropriate written Notice of the signing of the Medical Certificate of the Cause of Death, **section 18 of the Births and Deaths Registration Act, 1953**, allows a period of **FOURTEEN DAYS** within which to register the death.

Wilful refusal to answer any question put by the Registrar, or a failure to give the required information concerning a death, is an offence punishable on summary conviction by a fine not exceeding **FORTY SHILLINGS**.<sup>1</sup>

Moreover, by **section 4 (1) (a) of the Perjury Act, 1911**, a person is guilty of a misdemeanour<sup>2</sup> if he **wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth or death, or, wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death.**

#### **Position Regarding Other Deaths.**

Where a person dies elsewhere than in a house or a body is found and no information is available as to the place of death, the following persons are qualified under **section 17 (2) of the Births and Deaths Registration Act, 1953**, to give information regarding the death:—

- (a) any relative of the deceased who has knowledge of any of the particulars required to be registered concerning the death;
- (b) any person present at the death;
- (c) any person finding or taking charge of the body;
- (d) any person causing the disposal of the body.

**Section 17 (3)** imposes a duty upon each of the relatives and, if there are no relatives, upon each of the other qualified informants, to register the death within **FIVE DAYS**

<sup>1</sup> Births and Deaths Registration Act, 1953, s. 36 (a) and (e).

<sup>2</sup> Punishable on indictment, by imprisonment not exceeding **SEVEN YEARS** or by a fine; and on summary conviction, by a fine not exceeding **FIFTY POUNDS** [£50]: Perjury Act, 1911, s. 4; Criminal Justice Act, 1925, s. 28 (2).



after its occurrence, but this period is extended to **FOURTEEN DAYS** where the appropriate written notices are given under **section 18** above (p. 88).

Wilful refusal to answer any question put by the Registrar, or a failure to give the necessary information concerning a death, renders a person liable on summary conviction to a fine not exceeding **FORTY SHILLINGS** for each offence.<sup>1</sup>

### **DUTY OF MEDICAL PRACTITIONER TO DELIVER A CERTIFICATE OF CAUSE OF DEATH TO THE REGISTRAR AND WRITTEN NOTICE TO A QUALIFIED INFORMANT.**

Section 22 of the Births and Deaths Registration Act, 1953, provides, *inter alia*:—

(1) In the case of the death of any person who has been attended during his last illness by a registered medical practitioner, that practitioner shall sign a certificate in the prescribed form<sup>2</sup> stating to the best of his knowledge and belief the cause of death and shall forthwith deliver that certificate to the registrar.

(2) On signing a certificate of the cause of death under the foregoing subsection the medical practitioner shall give in the prescribed form<sup>3</sup> to some qualified informant of the death notice in writing of the signing of the certificate, and that person shall, except where an inquest is held on the body or touching the death of the deceased person, deliver the said notice to the registrar.

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<sup>1</sup> Births and Deaths Registration Act, 1953, s. 36 (a) and (e).

<sup>2</sup> The appropriate Form of Medical Certificate of Cause of Death is prescribed by *Regulation 10* (1) of, and is set out in the Tenth Schedule to, the Registration (Births, Still-Births and Deaths) (Prescription of Forms) Regulations, 1953.

<sup>3</sup> The appropriate Notice to Informant of the Signing of a Certificate of Cause of Death is prescribed by *Regulation 10* (2) of, and is set out in the Eleventh Schedule to, the Registration (Births, Still-Births and Deaths) (Prescription of Forms) Regulations, 1953.



Except where an inquest is held or a post-mortem examination is carried out, **section 22 (3)** requires the Registrar to **enter in the register the cause of death as stated in the certificate, together with the name of the certifying medical practitioner.**

The Registrar General must supply Registrars with the appropriate printed forms, which must be furnished free of charge to any registered medical practitioner residing or practising in a Registrar's sub-district.<sup>1</sup>

### OFFENCES AND PENALTIES AS TO MEDICAL CERTIFICATES OF CAUSE OF DEATH.

By section 37 of the Births and Deaths Registration Act, 1953:—

**If any person forges or falsifies any certificate . . . under this Act, or knowingly uses, or gives or sends to any person, as genuine any false or forged certificate, . . . for the purposes of this Act, he shall be liable on summary conviction to a fine not exceeding TEN POUNDS [£10].**

Where a medical practitioner had received £27 from an insurance superintendent for a number of false certificates of death issued from a book of usual forms distributed by the Registrar-General, the Court of Criminal Appeal held in *R. v. Ryan*<sup>2</sup> that the accused was guilty of an offence under **section 4 (1) (b) of the Perjury Act, 1911.**

By the above provision, a person is guilty of a misdemeanour<sup>3</sup> if he **wilfully makes any false certificate or declaration**

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<sup>1</sup> Births and Deaths Registration Act, 1953, s. 22 (4).

<sup>2</sup> (1914), 10 Cr. App. R. 4.

<sup>3</sup> Punishable on indictment, by imprisonment not exceeding SEVEN YEARS or by a fine; and on summary conviction, by a fine not exceeding FIFTY POUNDS [£50]: Perjury Act, 1911, s. 4; Criminal Justice Act, 1925, s. 28 (2).



under or for the purposes of any Act relating to the registration of births or deaths, or, knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person.

The defence in *Ryan's Case* was firstly, that the certificates had not been issued *under* an Act relating to the registration of deaths because they had not in fact been used for registration purposes, and secondly, they had not been made wilfully. In disposing of these contentions, Lord Reading, C. J., observed<sup>1</sup>:—

“The Act refers to making a false certificate *under or for the purposes*<sup>2</sup> of any Act relating to the registration of births and deaths. That implies that there may be a false certificate *under*<sup>2</sup> such an Act which is not for the *purpose*<sup>2</sup> of the Act. We have come to the conclusion that the judge was right in the view he took that ‘wilfully’ means ‘intentionally’, and ‘intentionally’ means that he knew at the time of the making of these certificates that he was making false statements in relation to documents which purported to be made under the Act for the registration of births or deaths, and could be used under the Act.”

The distinction for practical purposes, therefore, between the more serious type of offence under **section 4 (1) (b) of the Perjury Act, 1911**, and an offence under **section 37 of the Births and Deaths Registration Act, 1953**, is that **section 4 (1) (b)** covers *any* purpose, whereas **section 37** is expressly limited to *the purposes of the Act*, i.e., the purposes of registration.

Any refusal or failure without reasonable excuse to deliver a medical certificate to the Registrar is an offence under **section 36 (b) of the Births and Deaths Registration Act, 1953**, punishable on summary conviction by a fine not exceeding **TWO POUNDS [£2]**.

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<sup>1</sup> (1914), 10 Cr. App. R. 4, at pp. 6 and 7.

<sup>2</sup> Author's italics.



### DUTY OF REGISTRAR TO REPORT A DEATH TO THE CORONER IN CERTAIN CASES.

By *Regulation 82 (1)* of the **Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954**, a Registrar who has been informed of the death of any person within *twelve months* of its occurrence must report the death to the Coroner in any of the following circumstances:—

- (a) where the deceased was not attended during his last illness by a registered medical practitioner;
- (b) if the Registrar has been unable to obtain delivery of a duly completed medical certificate of the cause of death;
- (c) where it appears to the Registrar from the particulars contained in the medical certificate, or otherwise, that the deceased was not seen by the certifying practitioner *either* after death *or* within *fourteen days* before death;
- (d) where the cause of death appears to be unknown;
- (e) if the Registrar has reason to believe that the death was unnatural or directly or indirectly caused by any sort of accident, violence or neglect, or was attended by suspicious circumstances;
- (f) where the death occurred after an operation necessitated by injury or under an operation or before recovery from the effects of the anaesthetic ; or
- (g) if it appears to the Registrar from the contents of any medical certificate that the death was due to abortion, industrial disease, or poisoning (including industrial or food poisoning).

*Regulation 82 (3)* prohibits a Registrar from registering any death which he has himself reported to the Coroner, or which he knows has been, or ought to be reported



by any other person or authority, until the Registrar has received a Coroner's Certificate or a Notification that the Coroner does not intend to hold an Inquest.

Where an Inquest is held, **section 23 of the Births and Deaths Registration Act, 1953**, requires the Coroner, within *five days* of the finding, to send a Certificate to the Registrar giving information as to the death, Inquest and finding, which must be registered in the prescribed form and manner.<sup>1</sup>

### RELEVANT POWERS AND DUTIES OF CORONERS.

By **section 21 (1) of the Coroners (Amendment) Act, 1926**:—

Where a coroner is informed that the dead body of a person is lying within his jurisdiction and there is reasonable cause to suspect that the person has died a sudden death of which the cause is unknown, if the coroner is of opinion that a post-mortem examination may prove an inquest unnecessary he may direct any legally qualified medical practitioner . . . to make a post-mortem examination of the body of the deceased and to report the result thereof to him in writing.

When a Post-Mortem Examination is made under the above provision and the Coroner is thereby satisfied that an Inquest is unnecessary, **section 23 (3) of the Births and Deaths Registration Act, 1953**, requires him to send to the registrar a certificate under his hand stating the cause of death as disclosed by the report of the person making the examination, and the registrar must register the death accordingly.

Under **Rule 36 of the Coroners Rules, 1953**,<sup>2</sup> every Coroner must keep an indexed Register of all deaths

<sup>1</sup> *I.e.*, in accordance with *Regulations 85 and 86 of the Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954, supra*, p. 85.

<sup>2</sup> S.I. 1953 No. 205.



reported to him. The Register must contain the following particulars<sup>1</sup>:—

1. Date on which the death was reported.
2. Full name, address, age and sex of the deceased.
3. Cause of death.
4. A statement as to whether the case was disposed of by using Pink Form A (*i.e.*, where there was neither a Post-Mortem nor an Inquest) or B (*i.e.*, where there was a Post-Mortem but no Inquest), or whether an Inquest was held.
5. Verdict at Inquest (if any).

### REGISTRATION OF DEATH AFTER TWELVE MONTHS.

By section 21 (1) of the Births and Deaths Registration Act, 1953:—

After the expiration of twelve months from the date of the death or finding of the dead body of any person, the death of that person shall not be registered except with the written authority of the Registrar-General and in such manner and subject to such conditions as may be prescribed,<sup>2</sup> and the fact that the authority of the Registrar-General has been obtained shall be entered in the register.

A special fee of 7s. 6d. must be paid to the Superintendent Registrar and, unless the failure to register has been due to his own default, to the Registrar.<sup>3</sup>

Section 21 (3) provides:—

Any person who registers any death, or causes any death to be registered, in contravention of this section shall be liable on summary conviction to a fine not exceeding TEN POUNDS [£10].

<sup>1</sup> Coroners Rules, 1953, Second Schedule.

<sup>2</sup> See Regulation 87 of the Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954.

<sup>3</sup> Births and Deaths Registration Act, 1953, s. 21 (2).



## 2.—OBLIGATIONS AND PROCEDURE REGARDING THE DISPOSAL OF BODIES OF DECEASED PERSONS.

### PROHIBITION OF DISPOSAL EXCEPT AFTER DELIVERY OF THE REGISTRAR'S CERTI- FICATE FOR DISPOSAL OR CORONER'S ORDER FOR BURIAL OR CERTIFICATE FOR CREMATION.

By section 1 of the Births and Deaths Registration Act, 1926,<sup>1</sup> it is both prohibited and an offence punishable on summary conviction by a fine not exceeding **TEN POUNDS [£10]** for anyone to dispose of the body of a *deceased* person without *delivery* of the Registrar's Certificate for Disposal or the Coroner's Order for Burial or Certificate for Cremation.

The only exception is that a *burial* (not cremation) is allowed without actual delivery of the Registrar's Certificate or Coroner's Order where the person effecting the disposal is satisfied by a *written Declaration* in the prescribed form<sup>2</sup> from the person procuring the disposal that such a Certificate or Order has in fact been issued in respect of the deceased.<sup>3</sup>

As regards the disposal of *still-born* children, section 5 of the Births and Deaths Registration Act, 1926,<sup>4</sup> provides that it shall not be lawful for a person who has control over or who ordinarily buries bodies in any burial ground to permit to be buried or to bury in such burial ground a still-born child before there is delivered to him either a Registrar's Certificate for Disposal or, if there has been an inquest, an order of the coroner.

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<sup>1</sup> As slightly amended by the Births and Deaths Registration Act, 1953, s. 43 (1) and First Schedule, para. B2.

<sup>2</sup> For the appropriate form of Declaration, *see* the Registration (Births, Still-Births and Deaths) (Prescription of Forms) Regulations, 1953. Regulation 13 and Thirteenth Schedule.

<sup>3</sup> Births and Deaths Registration Act, 1926, s. 1, proviso.

<sup>4</sup> As slightly amended by the Births and Deaths Registration Act, 1953, s. 43 (1) and First Schedule, para. B3.



Under **section 11** of the 1926 Act, any contravention of the above provision is punishable on summary conviction by a fine not exceeding **TWO POUNDS [£2]**.

### **POSITION REGARDING THE REGISTRAR'S CERTIFICATE FOR DISPOSAL.**

#### **General Nature and Requirements as to the Two Types of Certificate for Disposal.**

Upon registering the death of any person dying in England or Wales,<sup>1</sup> **section 24 (1) of the Births and Deaths Registration Act, 1953**, provides, *inter alia*, that the Registrar shall forthwith give to the person giving information concerning the death a certificate under his hand that he has registered the death. Such a Certificate is called a "*Certificate for Disposal After Registration*" and must be given on a form provided for the purpose by the Registrar General.<sup>2</sup>

Where a properly completed Medical Certificate of the Cause of Death has been received by the Registrar, he may give a certificate under his hand that he has received notice of the death to any person from whom he has received written Notification thereof.<sup>3</sup> Such a Certificate is called a "*Certificate for Disposal Before Registration*" and must be given on the appropriate form supplied by the Registrar General.<sup>2</sup>

The two types of Certificate for Disposal are incorporated in a single document, namely in Part B<sup>4</sup> of

<sup>1</sup> In the case of a death outside England and Wales, a *Certificate of No Liability to Register* is required from the Registrar of Births and Deaths for the sub-district within which it is intended to bury or cremate the body: Births and Deaths Registration Act, 1953, s. 24 (2). The prescribed fee at present payable for such a Certificate is 7s. 6d.

<sup>2</sup> Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954, Regulation 88 (1).

<sup>3</sup> For the giving of written Notification of death prior to full registration particulars, see Births and Deaths Registration Act, 1953, s. 18, *supra*, p. 88.

<sup>4</sup> Part A of the Certificate for Disposal is retained by the Registrar for reference purposes.



the official form. The first Certificate set out in Part B is for Burial or Cremation, and is issued "*after* registration" of the death. The second Certificate is for Burial only, and is issued "*before* registration" of the death. There is also a detachable Part C, which is to be completed and returned to the Registrar within 96 hours of the disposal.<sup>1</sup>

It is important to note that the Registrar must not issue *any kind* of Certificate for Disposal **in any case where he is satisfied that a coroner's order has been issued authorising the disposal of the body.**<sup>2</sup>

As regards Certificates for Disposal *Before* Registration, Regulation 88 (2) of the 1954 Consolidated Regulations provides<sup>3</sup> that Registrars must only issue such Certificates for the purpose of burial (not cremation) in England or Wales, where:—

- (a) the death is one which is not required to be reported to the Coroner; or
- (b) the death has been reported to the Coroner and the Registrar has been informed by the Coroner that he has completed any investigations which he intends to make and has not issued any Order or Certificate for the purpose of the disposal of the body.

### **Transmission of Certificate for Disposal.**

**Section 24 (3) of the Births and Deaths Registration Act, 1953,** requires any person to whom a Registrar's Certificate for Disposal has been delivered to **transmit it to the person effecting the disposal of the body of the deceased person.**

<sup>1</sup> For details regarding Notification of Disposal to the Registrar, see pp. 99 to 101, *infra*.

<sup>2</sup> Births and Deaths Registration Act, 1953, s. 24 (1), proviso.

<sup>3</sup> Similar provisions regarding the disposal of bodies of still-born children are contained in Regulation 67 (2) of the 1954 Consolidated Regulations.



By **section 24 (6)**, the expression “person effecting the disposal” normally means the person by whom, or by whose officer, the Burial Register is kept, or in the case of cremation, the Registrar of the Crematorium.<sup>1</sup>

### **Issue of a Duplicate Certificate for Disposal.**

**Section 24 (4)** of the 1953 Act empowers a Registrar to issue a Duplicate Certificate for Disposal **upon receiving a satisfactory explanation of any circumstances by reason of which the certificate is not available.** The Duplicate must be in a distinctive form, and it may be issued on payment of the prescribed fee<sup>2</sup> **either to the person to whom the original certificate was given or to the person effecting the disposal of the body.**

By *Regulation 93 of Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954*, the prescribed fee is at present *7s. 6d.*

The procedure in regard to the issue of a Duplicate Certificate for Disposal is governed by *Regulation 94* of the 1954 Consolidated Regulations, which requires the Registrar:—

- (i) to note the issue of the Duplicate upon the counterfoil of the Original Certificate;
- (ii) to record the issue of the Duplicate on its own counterfoil, inserting thereon a reference to the record of the issue of the Original Certificate; and
- (iii) to complete the counterfoils of both the Original and Duplicate Certificates when Notification of Disposal is received.

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<sup>1</sup> In practice, the Certificate for Disposal is first delivered to the Medical Referee appointed by the cremation authority. For the appointment and functions of Medical Referees, see Chapter 8, pp. 150 to 152, *infra*.

<sup>2</sup> No fee must be charged for the original certificate: Births and Deaths Registration Act, 1953, s. 24 (1).



## POSITION REGARDING THE ISSUE OF A CORONER'S ORDER FOR BURIAL.

Rule 11 of the **Coroners Rules, 1953**,<sup>1</sup> provides that an Order of a Coroner authorising the burial of a body<sup>2</sup> must *not* be issued unless the Coroner has held, or has decided to hold, an Inquest upon the body.

By Rule 12, where a Coroner is satisfied that a Certificate for Disposal has been issued by a Registrar, the Coroner must *not* issue an Order authorising the burial of that body unless the Certificate for Disposal has been surrendered to him. On issue of his Order, the Coroner must transmit the Certificate for Disposal to the Registrar and inform him of the issue of the Order.

It is important to note that under the proviso to **section 24 (1) of the Births and Deaths Registration Act, 1953**,<sup>3</sup> the Registrar must *not* issue a Certificate for Disposal where he is satisfied that a Coroner's Order for Burial has been issued.

## NOTIFICATION OF DISPOSAL TO THE REGISTRAR.

### Nature of the Obligation and Form of Notification.

**Section 3 (1) of the Births and Deaths Registration Act, 1926**, provides:—

The person effecting the disposal of the body of any deceased<sup>4</sup> person shall, within **NINETY-SIX HOURS** of the disposal, deliver to the registrar in the prescribed manner a notification as to the date, place and means of disposal of the body.

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<sup>1</sup> S.I. 1953 No. 205.

<sup>2</sup> For the appropriate form of a Coroner's Order for Burial, see **Coroners Rules, 1953**, Rule 42 and Third Schedule, Form 17.

<sup>3</sup> See p. 97, *supra*.

<sup>4</sup> It is important to note that the disposal of the body of a still-born child is *not* required to be notified to the Registrar.



*Regulation 91 (1) of the 1954 Consolidated Regulations* requires the notification to be made in writing, upon the detachable portion (Part C) of the Registrar's Certificate for Disposal, or on the appropriate part of the Coroner's Order for Burial or Certificate for Cremation. The person effecting the disposal, or some responsible person deputed to act on his behalf, must complete and detach the Notification of Disposal form and deliver it to the Registrar of the sub-district where the death occurred. The terms of the Notification, as set out in the Third Schedule to the 1954 Consolidated Regulations, are as follows:—

NOTIFICATION OF BURIAL OR CREMATION  
TO THE REGISTRAR OF BIRTHS  
AND DEATHS.

Births and Deaths Registration Act, 1926, s. 3 (1).

This is to notify that the body of.....  
deceased, who died on..... at.....  
was (a) .....  
on (b) .....  
at (c) .....  
(Signature).....  
on behalf of.....  
.....

Date.....

- 
- (a) Here state whether "buried" or "cremated".  
(b) Here state date of burial or cremation.  
(c) Here state place of burial or cremation.

**Procedure on Receipt of Notification.**

On receiving a Notification of the disposal of the body of a deceased person, *Regulation 91 (2)* requires the Registrar to complete the counterfoil relating to the deceased person in his book of Certificates for Disposal in the manner provided by the counterfoil.

**Procedure in Default of Notification.**

If no Notification of Disposal has been received by the Registrar within 14 *days*<sup>1</sup> from the date of the issue of the Registrar's Certificate for Disposal or Coroner's Order for Burial or Certificate for Cremation, as the case may be, **section 24 (5) of the Births and Deaths Registration Act, 1953**, provides that **the registrar shall make enquiry of the person to whom the certificate or order was issued and it shall be the duty of that person to give information to the best of his knowledge and belief as to the person having the custody of the certificate or order, the place in which the body is lying, or, if the body has been disposed of, the person effecting the disposal.**<sup>2</sup>

Where in response to such an inquiry the Registrar is informed that the body has not been disposed of, he must, unless informed that it is being held for the purposes of the **Anatomy Acts, 1832 and 1871**, forthwith report the matter to the Medical Officer of Health for the district in which the body is lying.<sup>3</sup>

Where after such an inquiry it appears to the Registrar that the body has been disposed of and that notification of the disposal has not been made to him within the time required by law, he must make immediate application for such notification to the person effecting the disposal<sup>2</sup> of the body, and if the notification is not received within *three days* he must forthwith report the matter to the Registrar-General.<sup>4</sup>

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<sup>1</sup> This period is prescribed by *Regulation 92 (1)* of the Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954.

<sup>2</sup> For the meaning of the expression "person effecting the disposal", see p. 98, *supra*.

<sup>3</sup> Consolidated Regulations, 1954, *Regulation 92 (2)*.

<sup>4</sup> Consolidated Regulations, 1954, *Regulation 92 (3)*.



## PROHIBITION AGAINST THE REMOVAL OF A BODY OUT OF ENGLAND WITHOUT NOTICE TO THE CORONER.

Section 4 of the Births and Deaths Registration Act, 1926, provides:—

The body of a deceased person shall not be removed out of England until the expiration of the prescribed period after notice of the removal has been given to the coroner within whose jurisdiction the body is lying or otherwise than in accordance with such procedure as may be prescribed, and any person contravening the provisions of this section shall be liable on summary conviction to a fine not exceeding TEN POUNDS [£10].

Under *Regulation 4* of the **Removal of Bodies Regulations, 1954**,<sup>1</sup> Notice of Intention to Remove a Body out of England<sup>2</sup> must be given to the Coroner, together with any already issued Registrar's Certificate for Disposal or Coroner's Order for Burial or Certificate for Cremation.

Upon receiving such a notice, *Regulation 5* requires the Coroner forthwith to send or deliver an Acknowledgment of the Receipt of the Notice<sup>3</sup> to the person who gave the Notice, or to the funeral director or other person designated for that purpose. The Coroner must also notify the Registrar and return any Certificate for Disposal issued by him.

By *Regulation 6*, the body must not be removed out of England before the expiration of *four clear days* after the day on which Notice of Intention to Remove the Body was *received* by the Coroner, UNLESS the Coroner states in his Acknowledgment that he is satisfied that there is no necessity for him to make any further enquiries concerning the death, in which case the body may be removed at *any time* after *receipt* of the Acknowledgment.

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<sup>1</sup> S.I. 1954 No. 448.

<sup>2</sup> The appropriate Form of Notice is set out in the First Schedule to the Regulations.

<sup>3</sup> The appropriate Form of Acknowledgment is set out in the Second Schedule to the Regulations.



## CHAPTER 6

# BURIAL PROCEDURE AND THE REGISTRATION OF BURIALS.

### 1.—BURIAL PROCEDURE.

#### GENERAL POSITION APART FROM THE BURIAL LAWS AMENDMENT ACT, 1880.<sup>1</sup>

##### Everyone Normally Entitled to be Buried with the Church of England Burial Service.

In *R. v. Stewart*,<sup>2</sup> the general rule was recognised that every person dying in this country is entitled to Christian burial, with the full Church of England burial service being performed at the time of the interment, provided the deceased was not a person excluded by Ecclesiastical law from such a right.

Under Ecclesiastical law, persons are excluded from Christian burial if they die unbaptised or excommunicate, or have laid violent hands upon themselves, *i.e.*, are found at a Coroner's Inquest to have committed *felo de se*.

With regard to the ecclesiastical exclusion from Christian burial where a person dies "unbaptised", it should be observed that baptism according to the forms of *any* church or sect is sufficient and that a Church of England baptism is not essential. For example, in *Kemp v. Wickes*,<sup>3</sup> it was **held** that a baptised child of a dissenter

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<sup>1</sup> For the position under the Burial Laws Amendment Act, 1880, *see* pp. 105 to 107, *infra*.

<sup>2</sup> (1840), 12 Ad. and El. 773.

<sup>3</sup> (1809), 3 Phillim. 264.



was entitled to the Church of England burial service. Similarly, baptism by a Primitive Methodist Minister was **held** to be sufficient in *Nurse v. Henslowe*<sup>1</sup>; and in *Escott v. Mastin*,<sup>2</sup> a clergyman of the Church of England was suspended from the Ministry for three months where he had refused to officiate at the funeral of a child baptised with water in the name of the Trinity by a Wesleyan Methodist layman.

As regards the exclusion from Christian burial on the ground of *felo de se*,<sup>3</sup> it was **held** in *Cooper v. Dodd*<sup>4</sup> that the mere opinion of the *clergyman* as to the cause of death, where a Coroner's jury had returned a verdict of "found drowned", did *not* justify his refusal to bury the deceased. It was **further held** that on a wrongful refusal to bury, there was no discretion as to the penalty, which had to be suspension from the Ministry for *three months* by the Bishop of the Diocese.

**Church of England Burial Service had to be Performed by a Duly Authorised Minister of the Church in Consecrated Ground and the Full Burial Service Read.**

Before the Burial Laws Amendment Act, 1880, no Minister of the Church of England was permitted to perform a burial service in unconsecrated ground, and the only burial service allowed where a body was buried in consecrated ground was that of the Church of England.

In *Johnson v. Friend and Ballard*,<sup>5</sup> it was **held** illegal for anyone, other than a duly authorised Minister of the Church of England, to read or assist in reading a burial service on consecrated ground.

<sup>1</sup> (1844), 4 L.T.O.S. 195.

<sup>2</sup> (1842), 4 Moo. P.C.C. 104.

<sup>3</sup> Under s. 2 of the interments (Felo de Se) Act, 1882, the Coroner must direct that the remains of any person against whom a verdict of *felo de se* has been found be interred in the same burial place as would have been appropriate if there had been no such verdict. By ss. 3 and 4, the burial may be without a religious service or with any form of orderly religious service, except that of the Church of England performed by a Minister of the Church of England.

<sup>4</sup> (1850), 2 Rob. Eccl. 270.

<sup>5</sup> (1860), 6 Jur. N.S. 280.



Where a clergyman omitted certain words from the burial service because he believed the deceased was intoxicated when he died, it was **held** in *Re Todd*<sup>1</sup> that the Minister had to be suspended.

It is important to note that convenient warning<sup>2</sup> of the burial must be given to the Minister, and in this connection it was **held** in *Titchmarsh v. Chapman*<sup>3</sup> that it was insufficient merely to give the warning after the body had actually been brought to the churchyard.

### PROCEDURE UNDER THE BURIAL LAWS AMENDMENT ACT, 1880, WHERE THE CHURCH OF ENGLAND BURIAL SERVICE IS NOT REQUIRED.

By section 1 of the Burial Laws Amendment Act, 1880, 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<sup>4</sup> notice in writing, endorsed on the outside "Notice of Burial", . . . that it is intended that such deceased person shall be buried . . . 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.

The notice must 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 the Notice set out in Schedule (A) to the Act.<sup>5</sup>

<sup>1</sup> (1844), 3 Notes of Cases, Supp. 51.

<sup>2</sup> An appropriate form of Notice to a Clergyman to Officiate at a funeral is printed by Shaw & Sons Ltd., under Cat. No. INT 13.

<sup>3</sup> (1844), 8 Jur. 1077.

<sup>4</sup> In the case of burials in a burial ground or cemetery maintained by a burial or cemetery authority, s. 8 of the Burial Act, 1900, requires the notice to be given "at such time and to such person as the burial authority may direct". For the meaning of "burial authority" in this provision, see s. 11 of the Burial Act, 1900, *supra*, Chapter 1, p. 15.

<sup>5</sup> Burial Laws Amendment Act, 1880, s. 1. Appropriate forms are printed by Shaw & Sons Ltd., under Cat. No. BUR-A.



In *Hoare v. Ram*,<sup>1</sup> it was **held** that a Notice of Burial which did not contain the address of the person who gave it was *bad*, with the result that the additional funeral expenses due to the burial being postponed were not recoverable from the Minister who refused to bury on such a Notice.

By **section 3 of the Burial Laws Amendment Act, 1880**, the Notice of Burial must state the day and hour when the burial is proposed to take place, and, unless otherwise mutually arranged, the time of burial must be between 10 A.M. and 6 P.M. from April 1st to October 1st, and between 10 A.M. and 3 P.M. from October 1st to April 1st,<sup>2</sup> on some day other than Sunday or Christmas Day, or Good Friday. If no intimation of change of hour is sent to the person from whom the Notice of Burial was received or left at the house where the deceased person is lying, **section 4** requires the burial to **take place in accordance with and at the time specified in the Notice**.<sup>3</sup>

At the option of the person giving the notice, **section 6** of the 1880 Act provides that the burial may take place **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.** For the purposes of this section, a Christian service includes **every religious service used by any church, denomination, or person professing to be Christian.**

Whether there is a religious service or not, **section 7** requires the burial to be **conducted in a decent and orderly**

<sup>1</sup> (1881), 45 J.P. 729.

<sup>2</sup> It is important to note that most burial authorities have special Rules or Regulations regarding their normal hours for burials; *see* p. 108, head 8, *infra*.

<sup>3</sup> For the registration of burials under the Burial Laws Amendment Act, 1880, *see* s. 10, *infra*, p. 115.



**manner**, and it is a misdemeanour for any person to be guilty of any **riotous, violent, or indecent behaviour**, or of **wilfully obstructing** the burial or service, or of delivering any unauthorised address, or of wilfully endeavouring 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.

Under section 12 of the Burial Laws Amendment Act, 1880, no Minister of the Church of England shall be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the said church in any **UNCONSECRATED** burial ground or cemetery or part of a burial ground or cemetery, or in any building thereon. Moreover, 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 . . . shall be entitled, if he think fit, to have such burial performed therein according to the rights of the Church of England by any minister of the said church who may be willing to perform the same.

## **RULES AND REGULATIONS AS TO BURIALS.**

Burial and cemetery authorities usually have their own Rules and Regulations governing the management and use of their burial grounds and cemeteries. As regards the general procedure and arrangements for burials, the appropriate Rules and Regulations normally contain detailed provisions as to the following matters:—

1. The *time and place* for giving orders for interments and for the payment of the required fees and charges.
2. The *length of notice* to be given in the case of interments in:—
  - (i) public graves, *i.e.*, those in respect of which no exclusive right interment has been granted;



- (ii) private graves, *i.e.*, those in respect of which an exclusive right of interment has been granted, including vaults; and
  - (iii) vaults or bricked graves which are not already built but have to be constructed.
3. The payment of all fees and charges *in advance*.
  4. The *particulars* to be stated when an order for interment is given.<sup>1</sup>
  5. The necessity for *immediate written confirmation* of any order or instruction given by telephone.
  6. The *production* of the Registrar's *Certificate for Disposal*, *i.e.*, the Certificate regarding the death issued by the Registrar of Births and Deaths,<sup>2</sup> or of the *Coroner's Order for Burial*.<sup>3</sup>
  7. The need for the relatives or friends of the deceased to make their *own arrangements* for the conduct of any burial service that is to be performed.
  8. The *ordinary hours for burials*, and the special and exceptional provisions governing interments on a Sunday, Christmas Day or Good Friday.
  9. The burial of persons dying of an infectious disease.
  10. The selection, excavation, preparation, marking and re-opening of *private* graves.

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<sup>1</sup> An appropriate Notice of Interment is printed by Shaw & Sons Ltd., under Cat. No. BUR 29. It requires, *inter alia*, particulars as to (i) the name, description and age of the deceased; (ii) date and parish of death; (iii) the day, date and hour of the arrival of the funeral; (iv) the name of the Minister intended to officiate; (v) the marks of the grave space intended to be occupied; (vi) whether the burial is to be in consecrated or unconsecrated ground; (vii) whether in an unbricked grave, bricked grave or vault; (viii) whether the exclusive right of burial has been purchased and the signature of the present owner; and (ix) the proposed depth of the grave.

<sup>2</sup> See Chapter 5, pp. 96 to 98, *supra*.

<sup>3</sup> See Chapter 5, p. 99, *supra*.



11. The determination of the sites of *public* graves by the burial or cemetery authority, and the use therein of wooden coffins only.
12. The *procedure* for obtaining permission to erect and inscribe a monument, memorial or grave-stone,<sup>1</sup> and the requirements as to their foundations, size, quality, erection and maintenance.

### FEES AND CHARGES IN RESPECT OF BURIALS AND GRAVES.

Subject to the approval of the *Minister of Housing and Local Government* in the case of burial grounds provided under the **Burial Acts 1852 to 1906**,<sup>2</sup> burial and cemetery authorities prescribe their own Tables of Fees and Charges regarding such matters as:—

1. The purchase of exclusive rights of burial.
2. The excavation, walling, filling and re-opening of graves.
3. The grant of rights to erect monuments, headstones and border stones.
4. The preparation of graves and foundations for the erection of monuments and headstones.
5. The removal and replacement of headstones and border stones.
6. The planting, turfing and maintenance of graves.
7. Extra charges for non-residents.

As regards the fees payable to Ministers of Religion and sextons for services rendered at interments, **section 3 (1) of the Burial Act, 1900**,<sup>3</sup> requires them to be approved by the *Home Secretary* and to be the same whether the

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<sup>1</sup> Forms of Application for Permission to Erect and Inscribe a Monument, and of the Grant of the necessary Permission, are printed by Shaw & Sons Ltd., under Cat. No. BUR 36 and BUR 37, respectively.

<sup>2</sup> See the Burial Act, 1855, s. 7, *supra*, Chapter 2, pp. 32 and 33.

<sup>3</sup> For the wording of this provision, see Chapter 2, p. 45. *supra*.



service is performed on consecrated or unconsecrated ground. By section 3 (3), the fees must be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State.

Section 3 (4) of the Burial Act, 1900, provides, *inter alia*, that no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument or any other matter whatsoever, in any burial ground maintained by a burial authority, except for services rendered by him.<sup>1</sup> Similarly, no such fee is payable to the churchwardens of any parish or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability; and all fees formerly payable to ecclesiastical officers and clerks were likewise abolished, except fees payable to a sexton for services rendered by him.<sup>2</sup>

### BURIAL OF MURDERERS AND OTHER EXECUTED CRIMINALS.

Section 3 of the Offences Against the Person Act, 1861, provides:—

The body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction, and the sentence of the court shall so direct.

Under section 6 of the Capital Punishment Amendment Act, 1868, however, it is enacted that:—

The body of every offender shall be buried within the walls of the prison within which judgment of death is

<sup>1</sup> For a case in which a vicar, who had rendered no services whatsoever at two burials, was prevented from recovering a fee of 2s. 6d. in respect of each burial, see *Williams v. Briton Ferry Burial Board*, [1905] 2 K.B. 565.

<sup>2</sup> Burial Act, 1900, s. 4 (5).



executed on him: Provided, that if one of Her Majesty's Principal Secretaries of State is satisfied on the representation of the visiting justices of a prison that there is not convenient space within the walls thereof for the burial of offenders executed therein, he may, by writing under his hand, appoint some other fit place for that purpose, and the same shall be used accordingly.

### PROHIBITION AGAINST BURIALS WITHIN OR UNDERNEATH CHURCHES IN URBAN AREAS.

By section 83 of the Public Health Act, 1848<sup>1</sup>:—

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after 31st August, 1848; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding FIFTY POUNDS [£50].

It should be observed that, in special circumstances and subject to the grant of the necessary Faculty, burials may still occur in churches in *rural* areas or where the church existed before 1848. In this connection, it is interesting to note that St. George's Chapel, Windsor, is still the burial place for British Sovereigns.

As regards the burial of distinguished persons in St. Paul's Cathedral or Westminster Abbey by invitation under Her Majesty's Royal Sign Manual,<sup>2</sup> it should be observed that cremation is now required to precede the burial.

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<sup>1</sup> As re-enacted by s. 343 and the Fifth Schedule, Part III, of the Public Health Act, 1875.

<sup>2</sup> See s. 8 of the Burial Act, 1852.



### PROHIBITION AGAINST THE BURIAL OF DECEASED CHILDREN AS STILL-BORN.

Section 18 of the Births and Deaths Registration Act, 1874,<sup>1</sup> provides:—

A person shall not wilfully bury or procure to be buried the body of any deceased child as if it were still-born.<sup>2</sup>

A person who has control over or ordinarily buries bodies in any burial ground shall not permit to be buried in such burial ground the body of any deceased child as if it were still-born.<sup>2</sup>

Any person who acts in contravention of this section shall be liable to a penalty not exceeding TEN POUNDS [£10].

### REQUIREMENTS WHERE A COFFIN CONTAINS MORE THAN ONE BODY.

By section 19 of the Births and Deaths Registration Act, 1874:—

Where there is in the coffin in which any deceased person is brought for burial the body of any other deceased person, or the body of any still-born child,<sup>2</sup> the undertaker or other person who has charge of the funeral shall deliver to the person who buries or performs any funeral or religious service for the burial of such body or bodies notice in writing signed by such undertaker or other person, and stating to the best of his knowledge and belief with respect to each body the following particulars:

- (a.) If the body is the body of a deceased person, the name, sex, and place of abode of the said deceased person;
- (b.) If the body has been found exposed, and the name and place of abode are unknown, the fact of the body having been so found and of the said particulars being unknown; and

<sup>1</sup> As partly repealed by the Births and Deaths Registration Act, 1926, s. 13 and Second Schedule.

<sup>2</sup> For the meaning of "still-born child", see Chapter 5, p. 85, footnote 4, *supra*.



- (c.) If the body is that of a deceased child without a name, or a still-born child, the name and place of abode of the father, or, if it is illegitimate, of the mother of such child.

Every person who fails to comply with this section shall be liable to a penalty not exceeding TEN POUNDS [£10].

## 2.—THE REGISTRATION OF BURIALS.

### REGISTRATION OF BURIALS IN CHURCH-YARDS AND IN CATHEDRAL BURIAL GROUNDS UNDER THE PAROCHIAL REGISTERS ACT, 1812.

Under section 1 of the Parochial Registers Act, 1812, every churchyard burial according to the rites of the Church of England must be registered by the appropriate **rector, vicar, curate, or officiating minister** according to the form prescribed in Schedule (C) to the Act. The Burial Registers are obtainable from the Queen's Printer,<sup>1</sup> and, by section 3, the rector, vicar, curate, or officiating Minister must, as soon as possible after the burial and in no case (unless prevented by sickness or other unavoidable impediment) later than *seven days*, **record and enter in a fair and legible handwriting** the various particulars under the following prescribed headings<sup>2</sup>:—

1. Name.
2. Abode.
3. When Buried.
4. Age.
5. By whom the Ceremony was performed.

By section 20 of the Parochial Registers Act, 1812, the above provisions extend to **cathedral and collegiate churches and chapels of colleges or hospitals, and the burying grounds belonging thereto, and to the ministers who shall officiate therein.**

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<sup>1</sup> Parochial Registers Act, 1812, s. 2.

<sup>2</sup> These headings are prescribed by Schedule (C) to the Parochial Registers Act, 1812. The entry must be signed.



**REGISTRATION OF BURIALS IN BURIAL  
GROUNDS AND CEMETERIES UNDER  
THE BURIAL ACTS, 1852 to 1906, THE  
CEMETERIES CLAUSES ACT, 1847, AND THE  
PUBLIC HEALTH (INTERMENTS) ACT, 1879.**

All the burials in burial grounds and cemeteries established under the above Acts must be registered in a Register Book provided by the burial or cemetery authority concerned and kept by the officer or person appointed to that duty.<sup>1</sup>

By section 8 of the Burial Act, 1853, the Register of Burials must distinguish in what parts of the burial ground the several bodies (the burials of which are entered in the Register) are buried, and whether the ground is consecrated or unconsecrated; and in the case of a burial ground provided for more than one parish, the Register must be kept or indexed so as to facilitate searches for entries in respect of bodies from the different parishes.

In the Register of Burials printed by Shaw & Sons Ltd.,<sup>2</sup> provision is made for the following particulars:—

1. Name and Age of the Deceased.
2. Quality, Trade or Profession.
3. Date of Death.
4. Place or Parish where Death occurred.
5. Place or Parish from which the Body was brought.

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<sup>1</sup> Burial Act, 1853, s. 8; Cemeteries Clauses Act, 1847, s. 32; Registration of Burials Act, 1864, s. 1; and the Burial Act, 1900, s. 7. It should be observed, however, that the Register of Burials is to be kept by the *Chaplain* of the cemetery in the case of burials in the *consecrated* portion of a cemetery provided under a *local* Act which incorporates the Cemeteries Clauses Act and contains no special provision regarding the registration of burials: Cemeteries Clauses Act, 1847, s. 32, as amended by s. 7 of the Burial Act, 1900.

<sup>2</sup> Under Cat. No. BUR 6. Certificates of Burial for use when certified copies or extracts from the Burials Register are required are also printed by Shaw & Sons Ltd., under Cat. No. BUR 8.



6. Place of Burial, with details as to the situation and number of the grave and whether in consecrated or unconsecrated ground.
7. Date of Burial.
8. By whom the ceremony was performed.
9. Signature of the Person making the Entry of Burial.

Where a burial has taken place under the **Burial Laws Amendment Act, 1880**, without the rites of the Church of England,<sup>1</sup> it is important to note that **section 10** of that Act requires the person having charge of or being responsible for the burial to transmit on the day of the burial, or on the next day, a *Notice of Burial* in, or to the effect of, the prescribed statutory form<sup>2</sup> to the person by whom the appropriate Register of Burials is kept, who must enter the burial accordingly. Instead of stating by whom the ceremony of burial (if any) was performed,<sup>3</sup> the entry must state the name of the person who has given the Notice of Burial.

In *R. v. Hall*,<sup>4</sup> it was **held** that the duty to register a burial is enforceable by mandamus.

## OFFENCES REGARDING BURIAL REGISTERS AND BURIAL CERTIFICATES.

### Destroying, Defacing, Injuring or Falsifying Registers or Certificates.

Section 36 of the Forgery Act, 1861,<sup>5</sup> provides:—

Whosoever shall unlawfully destroy, deface or injure, or cause or permit to be destroyed, defaced or injured any register of . . . deaths or burials . . . or any part of such register, or any certified copy of such register

<sup>1</sup> See pp. 105 to 107, *ante*.

<sup>2</sup> The form is set out in Schedule (B) to the Burial Laws Amendment Act, 1880, and is printed by Shaw & Sons Ltd., under Cat. No. BUR-B.

<sup>3</sup> See head 8, of the Register of Burials, *above*.

<sup>4</sup> (1881), 45 J.P. 436.

<sup>5</sup> As amended by s. 1 (1) of the Criminal Justice Act, 1948.



or any part thereof, or shall knowingly and unlawfully insert or cause or permit to be inserted in any such register or in any certified copy thereof, any false entry of any matter relating to any . . . death or burial, or shall knowingly and unlawfully give any false certificate relating to any . . . death or burial or certify any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract shall be so given, to be false in any material particular, . . . shall be guilty of felony, and being convicted thereof, shall be liable to **IMPRISONMENT FOR LIFE**.<sup>1</sup>

#### **Forgery of Registers, Certificates or Seals.**

By section 3 (2) (a) of the Forgery Act, 1913,<sup>2</sup> it is a felony punishable with a maximum of **FOURTEEN YEARS' IMPRISONMENT**<sup>1</sup> for any person, with intent to defraud or deceive, to forge any Register of Burials, or any part of such a Register or any certified copy of it or part thereof. Under section 5 (2) (b), forgery of the seal of a burial authority, if committed with intent to defraud or deceive, is also a felony punishable with not more than **FOURTEEN YEARS' IMPRISONMENT**.<sup>1</sup>

#### **Making a False Statement in a Burial Certificate.**

Under section 5 (b) of the Perjury Act, 1911,<sup>3</sup> any person knowingly and wilfully making in a burial certificate a statement false in a material particular is guilty of a misdemeanour and liable on conviction to imprisonment for a term not exceeding **TWO YEARS** or to a **FINE**, or to **BOTH** such imprisonment and fine.

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<sup>1</sup> Under s. 13 of the Criminal Justice Act, 1948, a fine may be imposed in lieu of, or in addition to, a term of imprisonment.

<sup>2</sup> As amended by s. 1 (1) of the Criminal Justice Act, 1948.

<sup>3</sup> As amended by s. 1 (2) of the Criminal Justice Act, 1948.

## CHAPTER 7

# GIFTS FOR THE MAINTENANCE OF MONUMENTS, MEMORIALS, GRAVES OR TOMBSTONES.

### 1.—CLASSIFICATION AND EXAMPLES OF VALID GIFTS.

#### VALIDITY OF GIFTS WHERE AN IMMEDIATE CHARITABLE TRUST IS CREATED.

##### **Gifts for the Provision and Upkeep of Memorials in Churches.**

A gift for the provision and maintenance of a monument or memorial which forms part of the fabric or ornament of a church will normally be held to be for a charitable religious purpose, and, provided the gift is of a direct and immediate nature and not conditional, it will be valid.

For example, in *Hoare v. Osborne*,<sup>1</sup> a gift for the provision and maintenance of an ornamental window in a church in memory of the testator's mother was **held** to be valid. Similarly, in *Re Barker, Sherrington v. St. Paul's Cathedral (Dean and Chapter)*,<sup>2</sup> a bequest of £200 to the Dean and Chapter of St. Paul's Cathedral upon

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<sup>1</sup> (1866), L.R. 1 Eq. 585. See also, *Re Rigley's Trusts* (1866), 36 L.J. Ch. 147.

<sup>2</sup> (1909), 25 T.L.R. 753.



trust to apply the income in the maintenance and upkeep of a memorial tablet in the crypt of the Cathedral was **held** to be valid as a good charitable bequest.

Again, in *Re King, Kerr v. Bradley*,<sup>1</sup> it was **held**:

- (i) That a bequest of residue to provide for the erection of a stained-glass window in a church in memory of the testatrix and certain of her relatives was a good charitable gift.
- (ii) That in considering whether such a bequest is charitable or not the actual motive for the gift is immaterial and, therefore, even if the real motive is to provide a memorial, rather than to beautify the church or benefit the parishioners, it cannot affect the essentially charitable nature of the gift.
- (iii) Since the residue was more than sufficient to meet the cost of a window of the best possible character, the surplus had to be applied *cy-près* in the erection of a further stained-glass window, or windows, in the same church.

Romer, J., said<sup>2</sup>:—

“It is clear that a bequest to provide a parish church with stained-glass windows is a good charitable gift. But it is said that the gift here is bad because the motive is not to beautify the church or to benefit the parishioners, but to perpetuate the memory of the testatrix and her relations. It was, however, pointed out in *Hoare v. Osborne*<sup>3</sup> that in considering whether a bequest is charitable, the motive of the testator in making it is immaterial. In certain cases a gift for the purpose of erecting a tomb in a church has been held not to be a charitable gift, but the distinction between those cases and this is that a gift for erecting a tomb is not so obviously a gift for the benefit of a church as a gift for the provision of a stained-glass window.”

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<sup>1</sup> [1923] 1 Ch. 243.

<sup>2</sup> *Ibid.*, at p. 245.

<sup>3</sup> (1866), L.R. 1 Eq. 585, 587.



### Gifts for the Maintenance of Churchyards or other Burial Places.

In *Re Vaughan, Vaughan v. Thomas*<sup>1</sup> and in *Re Douglas, Douglas v. Simpson*,<sup>2</sup> it was **held** that a bequest of money on trust to apply the income in maintaining and repairing a churchyard was a valid charitable gift. In the former case, North, J., said<sup>3</sup>:—

“It is clear that the repair of a church is beyond all question a charitable object. So too, the repair of a parsonage: *Attorney-General v. Bishop of Chester*<sup>4</sup> is an authority for that. The repair of ornaments of a church has been held a charitable object in *Hoare v. Osborne*.<sup>5</sup> . . . To put it shortly, I do not see any difference between a gift to keep in repair what is called ‘God’s house’, and a gift to keep in repair the churchyard round it which is often called ‘God’s acre’.”

Even if the burial ground is not a parish churchyard but is provided for the benefit of members of a particular religious community, a gift for its upkeep may still be supported as a good charitable gift on the ground of it being for the advancement of religion. Thus, in *Re Manser, Attorney-General v. Lucas*,<sup>6</sup> a bequest for the maintenance of certain Quaker burial grounds, and in particular the grave, in one of the grounds, where the testator’s late wife was buried, was **held** to be a valid charitable gift. It is important to note that since the direction as to the grave of the testator’s wife did not constitute a *separate trust* but was merely ancillary to the repair of the burial grounds generally, this part of the gift was *not* rendered invalid.

Where a testatrix gave a bequest to the governing body of a parish church for the maintenance of the church and for the good and sufficient repair of the burial

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<sup>1</sup> (1886), 33 Ch. D. 187.

<sup>2</sup> [1905] 1 Ch. 279.

<sup>3</sup> (1886), 33 Ch. D. 187, at pp. 191 and 192.

<sup>4</sup> (1785), 1 Bro. C.C. 444.

<sup>5</sup> (1866), L.R. 1 Eq. 585, 588.

<sup>6</sup> [1905] 1 Ch. 68.



ground and a private monument therein to her late husband and herself, the High Court **held** in *Re Eighmie, Colbourne v. Wilks*<sup>1</sup> that this was a good charitable bequest. Since, however, the churchyard burial ground had been closed for burials for about thirty years and the monument was in fact situated in a cemetery immediately adjoining the churchyard, it was **further held** that the bequest had to be divided equally between the church and cemetery authorities.

#### **Gift for the Provision and Upkeep of Headstones on the Graves of Certain Pensioners.**

In *Re Pardoe, McLaughlin v. Attorney-General*,<sup>2</sup> a bequest to the vicar and churchwardens of a church on trust to apply the income, *inter alia*, for the purpose of erecting and maintaining headstones to the graves of almshouse pensioners buried in the churchyard was **held** to be a valid and effective charitable gift.

#### **Gift for the Upkeep of a Bier House in a Churchyard.**

In *Re Norton's Will Trusts, Lightfoot v. Goldson*,<sup>3</sup> it was **held**, *inter alia*, that a bequest for the repair of a bier house in a parish churchyard, used for the purpose of housing biers in connection with funerals, was for the benefit of the church and parish, and accordingly a good charitable gift.

### **VALIDITY OF GIFTS WHERE THERE IS NO INFRINGEMENT OF THE PERPETUITY RULE.<sup>4</sup>**

Where annuities to two lives in being were subject to a condition that the annuitants were to keep a tomb in repair during their lives and out of the proceeds of

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<sup>1</sup> [1935] Ch. 524.

<sup>2</sup> [1906] 2 Ch. 184.

<sup>3</sup> [1948] 2 All E.R. 842.

<sup>4</sup> This Rule, *inter alia*, normally prevents *property* being *tied up* for a period longer than a life, or any reasonable number of ascertainable lives, in being, *plus* 21 years.



their life interests, it was **held** in *Lloyd v. Lloyd*<sup>1</sup> that the conditions were binding. Kindersley, V. C., said<sup>2</sup>:—

“I am satisfied that a condition simply for keeping a tomb in repair is not a charitable one, and is not of itself illegal. It may be illegal to vest property in trustees in perpetuity for such a purpose. But the direction that the annuitants shall out of their life interests keep the tomb in repair is quite lawful and they are under an obligation, out of their annuities, to do so according to the direction of the will.”

In *Pirbright v. Salwey*,<sup>3</sup> a bequest to the rector and churchwardens of a parish church upon trust to apply the income “so long as the law for the time being permitted”, in keeping up a grave and decorating it with flowers, was **held** to be valid for at least a period of 21 years from the testator's death.

Similarly, in *Re Hooper, Parker v. Ward*,<sup>4</sup> a bequest to trustees to provide out of the income “so far as they legally can do so and in any manner that they may in their discretion arrange” for the care and upkeep of a tablet and a window *within* a church and of certain graves, monuments and a vault in a cemetery and a churchyard, was **held** to be permanently valid as regards the tablet and window since this was a good charitable gift, and good for 21 years from the testator's death in respect of the graves, monuments and vault.

In *Re Moore, Prior v. Moore*,<sup>5</sup> however, a trust in a will to maintain and keep in repair a tomb “for the longest period allowed by law, that is to say, until the period of twenty-one years from the death of the last survivor of all persons who shall be living at my death”, was **held** to be void for uncertainty.

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<sup>1</sup> (1852), 2 Sim. N.S. 255.

<sup>2</sup> *Ibid.*, at p. 264.

<sup>3</sup> [1896] W.N. 86.

<sup>4</sup> [1932] 1 Ch. 38.

<sup>5</sup> [1901] 1 Ch. 936.



**VALIDITY OF A BEQUEST FOR THE PURPOSES  
OF ONE CHARITY WITH A GIFT OVER TO  
ANOTHER CHARITY ON FAILURE TO KEEP  
A PRIVATE MONUMENT OR TOMB IN  
REPAIR.**

Where there was a bequest to the trustees of a charitable institution *for the purposes of the charity* but subject to a *condition* that they should keep the testator's family vault in good repair and with a *gift over* to another charitable institution on failure to comply with that condition, the Court of Appeal **held** in *Re Tyler, Tyler v. Tyler*<sup>1</sup> that *both* the condition and the gift over were valid because the condition was not itself unlawful and the rule against perpetuities does not apply to a transfer in a certain event from one charity to another.<sup>2</sup>

It is important to note that the bequest did not *tie up* any *property* for the perpetual repair of the tomb. Moreover, no *trust* was created regarding the tomb, since there was no obligation or even express power to use *any part* of the *bequest* for its repair.<sup>3</sup> The principal effect of the condition was simply that the first charity could keep the benefit of the bequest so long as they kept the vault in repair but if they failed to do so their interest was to cease and the benefit pass to the second charity.

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<sup>1</sup> [1891] 3 Ch. 252.

<sup>2</sup> This latter principle regarding the inapplicability of the perpetuity rule was formerly established in *Christ's Hospital v. Grainger* (1849), 19 L.J. Ch. 33. The reason appears to be that since a gift to a charity may validly exist in perpetuity there can be no objection to a *gift over* from one charity to another, because the possibility of such a transfer renders the property more, and not less, alienable, the fundamental principle underlying all aspects of the perpetuity rule being to prevent property being *tied up* for too long a period.

<sup>3</sup> See, and distinguish, *Re Dalziel, Midland Bank Executor and Trustee Co., Ltd. v. St. Bartholomew's Hospital*, [1943] 1 Ch. 277, *infra*, p. 129.



Regarding the nature and effect of the condition and bequest in the above case, Lindley, L. J., observed<sup>1</sup>:—

“There is no doubt whatever that this condition, in one sense, tends to a perpetuity. The tomb or vault is to be kept in repair, and in repair for ever. There is also no doubt, and I think it is settled, that a gift of that kind cannot be supported as a charitable gift. But, then, this case is said to fall within an exception to the general rule relating to perpetuities. It is common knowledge that the rule as to perpetuities does not apply to property given to charities; and there are reasons why it should not. It is an exception to the general rule. . . .”

“What is this gift when you come to look at it? It is a gift . . . to a charity for charitable purposes, with a gift over on an event which may be beyond the ordinary limit of perpetuities to another charity—I cannot see that there is anything illegal in this. . . . That appears to me, both on principle and authority, to be valid; and I do not think it is a sufficient answer to say that such a conclusion is an inducement to do that which contravenes the law against perpetuities. There is nothing illegal in keeping up a tomb; on the contrary, it is a very laudable thing to do. It is a rule of law that you shall not tie up property in such a way as to infringe what we know as the law against perpetuities; but there is nothing illegal in what the testator has done here.”

In examining the effect of the perpetuity rule and emphasising that no actual *property* was tied up for the purpose of repairing the vault, Fry, L. J., said<sup>2</sup>:—

“Inasmuch as both the donees of this fund, the first donee and the second, are charitable bodies, and are created for the purposes of charity, the rule of law against perpetuities has nothing whatever to do with the donees. Does the rule of law against perpetuities create any objection to the nature of the condition? If the testator had *required* the first donee, the London Missionary Society, to apply *any portions of the fund* towards the repair of the family tomb, that would, in all probability, at any rate to the extent of the sum required,

<sup>1</sup> [1891] 3 Ch. 252, at pp. 257 to 259.

<sup>2</sup> *Ibid.*, at p. 259.



have been void as a perpetuity which was not charity.<sup>1</sup> But he has done nothing of the sort. He has given the first donee no power to apply any part of the money. He has only created a *condition* that the sum shall go over . . . if the London Missionary Society do not keep the tomb in repair. Keeping the tomb in repair is not an illegal object. If it were, the condition tending to bring about an illegal act would itself be illegal; but to repair the tomb is a perfectly lawful thing. All that can be said is that it is not lawful to tie up *property* for that purpose. But the rule of law against perpetuities applies to *property*, not motives; and I know of no rule which says that you may not try to enforce a *condition* creating a perpetual inducement to do a thing which is lawful.”<sup>2</sup>

In regard to the point that the imposition of the condition required the first charity to keep the money invested because it might have to go over to the second charity at any moment, Fry, L. J., observed<sup>3</sup>:—

“What is the harm of that? Being a charity, and not affected by the rule against perpetuities, whether you direct them to keep the money invested in plain words, or whether you impose the condition which renders it necessary to keep it invested, seems to me the same thing and to be equally harmless, and not affected by the law against perpetuities.”

<sup>1</sup> See *Re Dalziel, Midland Bank Executor and Trustee Co., Ltd. v. St. Bartholomew's Hospital*, [1943] 1 Ch. 277, *infra*, pp. 129, 131 and 132, where the trustees were directed to apply part or, of necessary, the whole of a bequest for the maintenance of a family mausoleum and the gift was held to be wholly void. Distinguish *Re Martin, Barclays Bank v. St. Bartholomew's Hospital*, [1952] W.N. 339, where there was a gift to a charity subject to a condition requiring certain graves to be maintained out of part of the income from the fund, with a gift over to another charity on breach of the condition. In this case, Harman, J., held that, although the condition was void, it concerned only a *small portion* of the income from the fund and, therefore, the gift to the first charity took effect free from the condition as such; but, if the graves were not in fact maintained, the gift over to the second charity would nevertheless take effect. Harman, J., appropriately remarked (at p. 340) that “if it seemed odd that a condition which was bad when applied to the gift of income in the first place might come in by way of a gift over in the second, that was the kind of subtlety which existed in this branch of the law”.

<sup>2</sup> Author's italics throughout.

<sup>3</sup> [1891] 3 Ch. 252, at p. 260.



It should be observed that if a gift over from one charity is *not* to another charity, the gift over must necessarily take effect *within* the perpetuity period; otherwise it is void, and the charity takes the original gift unconditionally.<sup>1</sup>

**VALIDITY OF A BEQUEST FOR THE GENERAL PURPOSES OF A NON-CHARITABLE CEMETERY COMPANY SO LONG AS IT MAINTAINED TWO PRIVATE GRAVES IN GOOD ORDER AND CONDITION.**

In *Re Chardon, Johnston v. Davies*,<sup>2</sup> a legacy of £200 was bequeathed to trustees upon trust to invest it and pay the income to a private cemetery company “during such period as they shall continue to maintain and keep” in good order and condition two private graves in the cemetery. The company could dispose of the income as they pleased, but if the graves were not kept in proper condition the legacy was to fall into residue.

The High Court **held**:

That the gift was valid, because being already vested and capable of determination—and hence alienation—at any time, it could not infringe the rule against perpetuities nor the rule against inalienability.

After reading the terms of the above gift, Romer, J., said<sup>3</sup>:—

“It is argued that that is a void gift, and on reading it the mind is naturally directed to the cases in which it has been established over and over again that a trust to keep in repair a tomb not in a church is invalid, either because it offends the rule against perpetuities, the beneficial interest not necessarily vesting in a life in being and

<sup>1</sup> *Re Bowen, Lloyd Phillips v. Davis*, [1893] 2 Ch. 491.

<sup>2</sup> [1928] Ch. 464.

<sup>3</sup> *Ibid.*, at pp. 467 and 468.



twenty-one years; or because the beneficial interest never vests in any one at all. One is therefore inclined at first sight to come, I think too hastily, to the conclusion that any trust not being a charitable trust which may go on, as this one may go on, indefinitely beyond lives in being and twenty-one years is invalid. But then when the matter is considered a little more closely this question presents itself: If this be a bad gift it must be because there is some principle of law or equity that makes it bad. Now there is a rule to the effect that vested interests in property cannot be rendered inalienable. But the interest of the cemetery company under the gift in question is certainly not inalienable; they could dispose of it, if they could find a purchaser, to-morrow. There is also the well known rule against perpetuities which is quite a different rule from that against inalienability, and that rule is that the *vesting*<sup>1</sup> of property real or personal (and it also applies to interests legal or equitable) cannot be postponed beyond lives in being and twenty-one years. This gift does not appear to offend against that rule. The interest of the cemetery company, such as it is, *vests at once*.<sup>1</sup> . . . I cannot see therefore that this gift offends against the rule against perpetuities, as I understand that rule."

In concluding his judgment, Romer, J., summarised the position as follows<sup>2</sup>:—

"The cemetery company and the persons interested in the legacy, subject to the interest of the cemetery company, could combine to-morrow and dispose of the whole legacy. The trust does not, therefore, offend the rule against inalienability. The interest of the cemetery company is a *vested*<sup>1</sup> interest; the interests of the residuary legatee, it being agreed on all hands that, subject to the interest of the cemetery company, the legacy falls into residue, are also *vested*.<sup>1</sup> All the interests therefore created in this 200l., legal and equitable, are *vested*<sup>1</sup> interests and, that being so, the trusts do not offend the rule against perpetuity. I know of no other rule which will enable me to come to the conclusion that this is an invalid gift."

<sup>1</sup> Author's italics.

<sup>2</sup> [1928] 1 Ch. 464, at p. 470



**POSITION WHERE THERE WAS A BEQUEST  
UPON TRUST FOR A NON-CHARITABLE  
INSTITUTION SO LONG AS IT MAINTAINED  
A PRIVATE GRAVE WITH A GIFT OVER TO  
A CHARITY.**

In *Re Chambers' Will Trusts, Official Trustees of Charitable Funds v. British Union for the Abolition of Vivisection*,<sup>1</sup> a testator bequeathed £800 to trustees upon trust to invest it and pay the income to the non-charitable society of the British Union for the Abolition of Vivisection "during such time as" it "shall keep in good state of repair to the satisfaction of my trustees" a specified private grave in a certain churchyard "and on failure so to do to pay the income thereof to the Religious Tract Society so long as it shall keep in like manner the said grave in good repair".

The High Court **held**:

- (i) That the first gift was valid, since the language used was indistinguishable from that in *Re Chardon*.<sup>2</sup>
- (ii) That the *gift over* failed, because it was not bound to vest within the perpetuity period, and the fact that the object of the gift over was a charity made no difference.

In regard to the invalidity of the gift over, the following *dicta* of Lord Selborne, L. C., in *Chamberlayne v. Brockett*<sup>3</sup> was applied:—

"On the other hand, if the gift in trust for charity is itself conditional upon a future and uncertain event, it is subject, in our judgment, to the same rules and principles as any other estate depending for its coming into existence upon a condition precedent. If the condition is never fulfilled, the estate never arises; if it is so remote and indefinite as to transgress the limits of time prescribed by the rules of law against perpetuities the gift fails *ab initio*."

<sup>1</sup> [1950] Ch. 267.

<sup>2</sup> [1928] Ch. 464, *supra*, pp. 125 and 126.

<sup>3</sup> (1872), L. R. 8 Ch. App. 206, at p. 211.



## VALIDITY OF GIFTS TO LOCAL AUTHORITIES WITH SPECIAL STATUTORY POWERS.

Where a local authority are empowered under a local Act of Parliament<sup>1</sup> to accept gifts for the maintenance of graves in perpetuity, the common law rule against perpetuities cannot, of course, apply so as to invalidate such a gift.

## 2.—CLASSIFICATION AND EXAMPLES OF INVALID GIFTS.

### INVALIDITY OF GIFTS WHICH PURPORT TO CREATE PERPETUAL NON-CHARITABLE TRUSTS FOR THE MAINTENANCE OF MONUMENTS, MEMORIALS, GRAVES OR TOMBSTONES.

#### Monuments, Memorials and Tombstones Not forming Part of the Fabric or Ornament of a Church.

In the early case of *Gravenor v. Hollum*,<sup>2</sup> a perpetual trust for the maintenance of a family vault was **held** to be void. Similarly, a gift for the upkeep of tombs for the benefit of the testator and certain relatives was bad in *Re Rickard*, *Rickard v. Robson*,<sup>3</sup> and a trust for the upkeep of family graves was **held** to be void as tending to a perpetuity in *Fowler v. Fowler*.<sup>4</sup>

These decisions were followed in such cases as:—

(i) *Hoare v. Osborne*.<sup>5</sup>

**Held, inter alia:** That a gift for the repair of a vault in a churchyard was *not* a charitable gift.

<sup>1</sup> See, for example, the Manchester Corporation (General Powers) Act, 1930, s. 52; the London County Council (General Powers) Act, 1934, s. 61, and the Swindon Corporation Act, 1947, s. 87.

<sup>2</sup> (1767), Amb. 643.

<sup>3</sup> (1862), 31 Beav. 244.

<sup>4</sup> (1864), 33 Beav. 616.

<sup>5</sup> (1866), L.R. 1 Eq. 585.

(ii) *Re Rigley's Trusts*.<sup>1</sup>

**Held, inter alia:** That a bequest for the perpetual repair of a family vault and tombstone was void.

(iii) *Fisk v. Attorney-General*.<sup>2</sup>

**Held:** that a gift to "keep in repair" a tomb as should be "necessary or required" was bad.

(iv) *Re Rogerson, Bird v. Lee*.<sup>3</sup>

**Held:** That a perpetual trust for keeping the testator's tomb in a churchyard in good repair and condition could not be created.

(v) *Re Barker, Sherrington v. St. Paul's Cathedral (Dean and Chapter)*.<sup>4</sup>

**Held:** That part of a bequest to the trustees of a charity to apply income from it in maintaining the tomb of the testatrix's son was void.

(vi) *Re Dalziel, Midland Bank Executor and Trustee Co., Ltd. v. St. Bartholomew's Hospital*.<sup>5</sup>

**Held:** That a gift to the trustees of a charity for the maintenance and rebuilding of a family mausoleum must fail, because the trustees were clearly and specifically directed to use part or, if necessary, the whole of the *actual income*<sup>6</sup> from the trust fund for this non-charitable purpose.

(vii) *Re Norton's Will Trusts, Lightfoot v. Goldson*.<sup>7</sup>

**Held:** That since the upkeep of the graves of the parents of the testator's wife was not a valid charitable object, not even a small part

<sup>1</sup> (1866), 36 L.J. Ch. 147.

<sup>2</sup> (1867), L.R. 4 Eq. 521.

<sup>3</sup> [1901] 1 Ch. 715.

<sup>4</sup> (1909), 25 T.L.R. 753.

<sup>5</sup> [1943] Ch. 277.

<sup>6</sup> Distinguish *In re Tyler*, [1891] 3 Ch. 252, where the income was given for the purposes of the charity—see pp. 122 to 124, *supra*.

<sup>7</sup> [1948] 2 All E.R. 842.



of an otherwise charitable gift could be applied in this manner so as to give effect to the testator's express bequest.

(viii) *Re Elliott, Lloyds Bank, Ltd. v. Burton-on-Trent Hospital Management Committee*.<sup>1</sup>

**Held:**

- (i) That the bequest of a legacy of £100 to an infirmary for the purpose of "maintaining and renovating" the testator's grave and headstone was void as infringing the rule against perpetuities.
- (ii) That a further bequest of the entire residue of the testator's estate for the general purposes of the infirmary subject to their acceptance of the first legacy and its condition, took effect unfettered by the illegal condition precedent, which was merely *malum prohibitum* and not *malum in se*.

**INVALIDITY OF GIFTS OVER WHICH ARE NOT BOUND TO VEST, IF THEY VEST AT ALL, WITHIN THE PERPETUITY PERIOD.<sup>2</sup>**

In *Re Davies, Lloyd v. Cardigan County Council*,<sup>3</sup> it was **held** that a *gift over* to a non-charitable pension fund on the failure of a vicar and his successors to repair certain private graves in a churchyard was void under the rule against perpetuities.<sup>4</sup>

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<sup>1</sup> [1952] Ch. 217.

<sup>2</sup> Normally, a life, or any reasonable number of ascertainable lives, in being, *plus* 21 years.

<sup>3</sup> [1915] 1 Ch. 543.

<sup>4</sup> For the invalidity of a gift over to a charity from a non-charitable society, see *Re Chambers' Will Trusts, Official Trustees of Charitable Funds v. British Union for the Abolition of Vivisection*, [1950] 1 Ch. 267, *supra*, p. 127.



Similarly, a *gift over* to a charity of a fund of £20,000 on failure by another charity to use part or, if necessary, the whole of the *actual income from the fund*<sup>1</sup> for the upkeep and rebuilding of a mausoleum, was **held** to be void in *Re Dalziel, Midland Bank Executor and Trustee Co., Ltd. v. St. Bartholomew's Hospital*.<sup>2</sup>

### 3.—POSITION WHERE A CONDITION RELATING TO THE MAINTENANCE OF A MONUMENT, MEMORIAL, GRAVE OR TOMBSTONE IS INVALID.

AN INVALID CONDITION ON AN OTHERWISE  
VALID CHARITABLE BEQUEST NORMALLY  
HAS NO EFFECT UPON THE BEQUEST  
UNLESS THERE IS A GIFT OVER ON  
BREACH OF THE CONDITION.

Where there is a valid charitable gift with an ineffective condition regarding the upkeep of a monument or memorial not forming part of the fabric or ornament of a church, it has been **held** in a number of cases<sup>3</sup> that the *whole* gift is applicable to the valid charitable objects and not merely a proportionate part of the gift. Such a bequest is regarded as a gift of the *entire* fund to the

<sup>1</sup> Since the *fund itself* was tied up in perpetuity for a non-charitable object, the facts were materially different from those in *Re Tyler, Tyler v. Tyler*, [1891] 3 Ch. 252, *supra*, pp. 122 to 124.

<sup>2</sup> [1943] Ch. 277, at p. 280, where Cohen, J., applied the principle laid down by Lord Selborne, L.C., in *Chamberlayne v. Brockett* (1872), L.R. 8 Ch. App. 206, at p. 211; *see* p. 127, *supra*.

<sup>3</sup> For example, *Fisk v. Attorney-General* (1867), L.R. 4 Eq. 521; *Hunter v. Bullock* (1872), L.R. 14 Eq. 45; *Dawson v. Small* (1874), L.R. 18 Eq. 114; *Re Williams* (1877), 5 Ch. D. 735; *Re Birkett* (1878), 9 Ch. D. 576; *Re Vaughan, Vaughan v. Thomas* (1886), 33 Ch. D. 187, and *Re Rogerson, Bird v. Lee*, [1901] 1 Ch. 715.



charity subject to an inoperative condition, and not as a mere gift of the *balance* after the amount necessary for the invalid object has been ascertained and deducted.

In *Re Rogerson, Bird v. Lee*,<sup>1</sup> a testator bequeathed a sum of money to trustees upon trust, firstly to maintain his tomb in a churchyard, and secondly, to divide and distribute the remainder among the poor of certain almshouses. Joyce, J., said<sup>2</sup>:—

“Where, however, there is a trust for a tomb, as here, then, as Bacon, V.-C., pointed out in *Dawson v. Small*<sup>3</sup>—a similar case—‘the obligation to keep up the tombstones is merely honorary, but the obligation to give all that is not applied for the purpose first mentioned in favour of these poor people is by no means honorary; it is a trust that must be executed’. Testators who make bequests of this nature, if they know the law, really mean the legacy to go to the objects of the charitable bequest with a moral obligation to keep up the tomb.”

It is important to note, however, that provision for a *gift over* from one charity to another charity on breach of a condition relating to the upkeep of a private mausoleum prevented the court, in *Re Dalziel, Midland Bank Executor and Trustee Co., Ltd. v. St. Bartholomew's Hospital*,<sup>4</sup> from construing the condition as imposing a mere *moral* obligation, with the result that the gift over was **held** to be void. As Cohen, J., said<sup>5</sup>:—

“I think that the real foundation of the tomb cases is that the court felt itself able to construe the provision in the various wills as to the upkeep of the tombs as imposing only a moral obligation. Now, a gift over to take effect in the event of failure to maintain the mausoleum in good repair is only consistent with the view that the obligation to maintain the mausoleum was not to be a mere moral obligation.”

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<sup>1</sup> [1901] 1 Ch. 715.

<sup>2</sup> *Ibid.*, at p. 719.

<sup>3</sup> (1874), L.R. 18 Eq. 114, 118.

<sup>4</sup> [1943] Ch. 277.

<sup>5</sup> *Ibid.*, at p. 281.

**AN INVALID CONDITION ON A NON-CHARITABLE BEQUEST NORMALLY RENDERS THE WHOLE GIFT VOID.**

Cases have already been referred to<sup>1</sup> where gifts which purported to create perpetual non-charitable trusts for the maintenance of graves, monuments and memorials were held to be *wholly* void.

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<sup>1</sup> See pp. 128 to 130, *supra*.



# AN ANALYSIS OF THE EFFECT OF REVOLVING CREDIT ON THE INVESTMENT OF THE WHOLE OF THE

Cases have already been referred to, in which the effect of revolving credit has been studied for the purpose of determining its influence on the investment of the whole of the capital of the firm. It is not possible to give a general answer to the question, whether revolving credit is beneficial or not, as the answer depends on the circumstances of the case.

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## CHAPTER 2

### CREMATION POWERS, PROCEDURE AND OFFENCES.

#### PROVISION, MANAGEMENT AND DEVELOPMENT OF CREMATORIA.

#### PART II.

## The Law Relating to Cremation

### INTRODUCTION RELATING TO THE PROVISION AND MANAGEMENT OF CREMATORIA.

#### General Statutory Authority.

By section 4 of the Cremation Act, 1902, the power of a local authority to provide and maintain the public crematoriums of the district was vested in the local authority, and the power to regulate the same was vested in the local authority.

Section 5 of the Cremation Act, 1902, gave the local authority the power to provide and maintain the public crematoriums of the district, and the power to regulate the same was vested in the local authority. The Cremation Act, 1902, also gave the local authority the power to provide and maintain the public crematoriums of the district, and the power to regulate the same was vested in the local authority.

Section 6 of the Cremation Act, 1902, gave the local authority the power to provide and maintain the public crematoriums of the district, and the power to regulate the same was vested in the local authority.



PART II.

The Law Relating to Cremation

## CHAPTER 8

### CREMATION POWERS, PROCEDURE AND OFFENCES.

#### 1.—PROVISION, MANAGEMENT AND DEVELOPMENT OF CREMATORIA.

#### GENERAL POWERS AND DUTIES OF BURIAL AUTHORITIES REGARDING THE PROVISION AND MANAGEMENT OF CREMATORIA.

##### Relevant Statutory Authority.

By section 4 of the Cremation Act, 1902, the powers of a burial authority<sup>1</sup> to provide and maintain burial grounds or cemeteries, or anything essential, ancillary or incidental thereto, shall be deemed to extend to and include the provision of crematoria.<sup>2</sup>

<sup>1</sup> Defined by s. 2 of the Cremation Act, 1902, as "any burial board, any council, committee or other local authority having the powers and duties of a burial board, and any local authority *maintaining* a cemetery under the Public Health (Interments) Act, 1879, or under any local Act". It will be observed that this definition is the same as that in s. 11 of the Burial Act, 1900: *see* Chapter 1, p. 15, *supra*. By s. 4 (1) of the Cremation Act, 1952, however, the expression "burial authority" for the purposes of the Cremation Acts, 1902 and 1952, is deemed to include any council *having power* to provide a cemetery under the Public Health (Interments) Act, 1879.

<sup>2</sup> By s. 2 of the Cremation Act, 1902, the expression "crematorium" means "any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto". For some excellent "Recommendations on the Establishment of Crematoria", *see* the 1954 publication of the Federation of British Cremation Authorities, 34 Ely Place, London, E.C.1.



It is important to note, however, that under **section 10** it is expressly provided that nothing in the Act **shall authorise the burial authority or any person to create or permit a nuisance.**

### **Prohibitions as to the Siting of Crematoria.**

The following restrictions upon the siting of crematoria are imposed by **section 5** of the 1902 Act:—

**No crematorium shall be constructed nearer to any dwelling-house than TWO HUNDRED YARDS,<sup>1</sup> except with the consent, in writing, of the owner, lessee and occupier of such house, nor within FIFTY YARDS of any public highway, nor in the consecrated part of the burial ground of any burial authority.**

### **Requirements Before a New Crematorium is Used.**

By **section 1 (1)** of the Cremation Act, 1952<sup>2</sup>:—

**No human remains shall be burned in any crematorium established after the commencement of this Act<sup>3</sup> unless the site and plans have been approved by the Minister of Housing and Local Government nor until the crematorium has been certified to the Secretary of State by the burial authority or other person by whom it is established to be complete, to be in accordance with such plans and to be properly equipped for the purposes of the disposal of human remains by burning.**

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<sup>1</sup> In Metropolitan Boroughs, this distance is reduced to 100 yards by s. 64 of the London County Council (General Powers) Act, 1935.

<sup>2</sup> This provision applies to *all* crematoria established after 26th September, 1952. Under the proviso to s. 4 of the Cremation Act, 1902, the former requirements only applied to crematoria provided by burial authorities.

<sup>3</sup> *I.e.*, after 26th September, 1952. The Act received the Royal Assent of 26th June, 1952, and came into force three months later: Cremation Act, 1952, s. 5 (2).



**Power to Accept Gifts for Crematorium Purposes.**

Under section 6 of the Cremation Act, 1902, a burial authority may accept a donation of land for the purpose of a crematorium, and a donation of money or other property for enabling them to acquire, construct, or maintain a crematorium.

**POSITION REGARDING CREMATION CHARGES AND FEES.**

By section 9, a burial authority may demand payment of any such charges or fees, for the burning of human remains in any crematorium provided by them, as may be authorised by any table approved by the Minister of Housing and Local Government. It is further provided that such charges or fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of the deceased.

With the approval of the Home Secretary, fees for officiating Ministers may also be fixed in respect of a burial service before, at or after cremation.<sup>1</sup> Under section 3 (2) of the Cremation Act, 1952,<sup>2</sup> the Home Secretary is now empowered to fix such fees if the cremation authority fail to do so on his request. The fees must be paid to and collected by the cremation authority together with their other fees, and they must pay the Minister in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State.<sup>3</sup>

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<sup>1</sup> Cremation Act, 1902, s. 12.

<sup>2</sup> This provision applies s. 3 (1) to (3) of the Burial Act, 1900—see Chapter 2, p. 45, and Chapter 6, pp. 109 and 110, *supra*—to Ministers' fees for any burial service in respect of a cremation.

<sup>3</sup> Burial Act, 1900, s. 3 (3), as now applied by s. 3 (2) of the Cremation Act, 1952.



## POSITION OF THE INCUMBENT AND OTHER MINISTERS WITH REGARD TO THE PERFORMANCE OF A FUNERAL SERVICE BEFORE, AT OR AFTER A CREMATION.

Section 11 of the Cremation Act, 1902, enacts:—

The incumbent of any ecclesiastical parish shall not, with respect to his parishioners or persons dying in his parish, be under any obligation to perform a funeral service before, at or after the cremation of their remains, within the ground of a burial authority, but upon his refusal so to do, any clerk in Holy Orders of the Established Church, not being prohibited under ecclesiastical censure, may, with the permission of the bishop and at the request of the executor of the deceased person or of the burial authority or other person having charge of the cremation or interment of the cremated remains, perform such service within such ground.

## MAINTENANCE, CLOSING AND INSPECTION OF CREMATORIA.

*Regulation 1 of the Cremation Regulations, 1930,*<sup>1</sup> provides that every crematorium must be:—

- (a) maintained in good working order;
- (b) provided with a sufficient number of attendants; and
- (c) kept constantly in a clean and orderly condition.

A crematorium may be *closed* by Order of the Cremation Authority<sup>2</sup> provided not less than *one month's* notice is given by advertisement in two newspapers circulating in the locality and by written notice fixed at the entrance to the crematorium.<sup>3</sup>

<sup>1</sup> S.R. & O. 1930, No. 1016. These Regulations were made by the Home Secretary under s. 7 of the Cremation Act, 1902, and were reviewed by an Interdepartmental Committee appointed by him in September, 1947. The recommendations of this Cremation Committee—see their Official Report, Cmd. 8009 of 1950, pp. 22 to 25—have yet to be fully implemented, but a number of their suggestions were incorporated in the Cremation Act, and Regulations, 1952.

<sup>2</sup> Defined by the Cremation Regulations, 1930, S.R. & O. 1930, No. 1016, as “any burial authority or any company or person by whom a crematorium has been established”.

<sup>3</sup> Cremation Regulations, 1930, *Regulation 1*, proviso.



*Regulation 1* further provides that the Cremation Authority must give written notice to the Home Secretary of the opening or closing of any crematorium.

By *Regulation 21*, when any crematorium is closed, the Cremation Authority must send all registers and documents relating to the cremations which have taken place therein to the Home Secretary, or otherwise dispose of them as he may direct.

As regards the *inspection* of crematoria, *Regulation 2* requires every crematorium to be open to inspection at any reasonable time by any person appointed for that purpose by the Home Secretary or by the Minister of Housing and Local Government.

By *Regulation 20*, all registers and documents relating to any cremation must be open to inspection at any reasonable hour by any person appointed for that purpose by the Home Secretary, the Minister of Housing and Local Government or the Chief Officer of any Police Force.

## DEVELOPMENT OF CREMATORIA IN GREAT BRITAIN.<sup>1</sup>

The first crematorium was opened at Woking in 1885; by December 31st, 1954, the number of crematoria in Great Britain had risen to 74. During 1954, *six* new crematoria were officially opened, namely at Bolton, East London, Grimsby, South West Middlesex, West Hartlepool and Wolverhampton.

Before the **Cremation Act, 1902**, received the Royal Assent on July 22nd, 1902, only *seven* crematoria were in use, namely:—

1. Woking (1885).

<sup>1</sup> The details which follow are principally derived from a Table of Cremation Statistics compiled by the Cremation Society, in co-operation with the Federation of British Cremation Authorities and the Proprietary Crematoria Association, and published in the Official Journal of the Cremation Movement, *Pharos*, vol. 21, No. 1, p. 5. For an excellent survey of cremation abroad, see "*The Disposal of the Dead*" by C. J. Polson, R. P. Brittain and T. K. Marshall, Part III, Chapter XIV, pp. 130 to 146.



2. Manchester (1892).
3. Glasgow (1895).
4. Liverpool (1896).
5. Darlington (1901).
6. Hull (1901).
7. Leicester (June, 1902).

By 1920, a further *seven* crematoria had been opened, making a total of 14 in all, namely:—

8. Golders Green (November 1902).
9. Birmingham (Perry Barr) (1903).
10. London City (1905).
11. Leeds (Lawns Wood) (1905).
12. Bradford (1905).
13. Sheffield (1905).
14. West Norwood (1915).

In 1924, there were 16 crematoria (Hendon Park (1922), and Pontypridd (1924)), and the figures at the end of decade since are:—

Year.	Crematoria.
1934	28
1944	58
1954	74 <sup>1</sup>

## 2.—CREMATION PROCEDURE.

The main requirements governing the procedure for cremation in England<sup>2</sup> are contained in the **Cremation Regulations, 1930**, as amended by the **Cremation Regulations, 1952**.<sup>3</sup> The provisions and effect of these Regula-

<sup>1</sup> For a complete Directory of British Crematoria as at January 1st 1956, with office addresses and telephone numbers, *see* Appendix II, *infra*.

<sup>2</sup> As to cremations in Scotland, *see* the Cremation (Scotland) Regulations, 1935, S.R. & O. 1935, No. 247, as amended by the Cremation (Scotland) Regulations, 1952, S.I. 1952 No. 1639 (S. 84).

<sup>3</sup> S.I. 1952, No. 1568. *See* footnote <sup>1</sup>, p. 140, *supra*.

tions must now be considered in detail and, unless otherwise stated, all references are to the principal Regulations of 1930.

## **RESTRICTIONS UPON CREMATION GENERALLY.**

### **No Cremation unless the Home Secretary has been Notified of the Opening of the Crematorium.<sup>1</sup>**

No cremations of human remains shall take place except in a crematorium of the opening of which notice has been given to the Secretary of State. (*Regulation 3.*)

### **No Cremation Against the Known Written Wishes of the Deceased.**

It shall not be lawful to cremate the remains of any person who is known to have left a written direction to the contrary. (*Regulation 4.*)

Contrary to popular belief, it is important to note that cremation can take place *without* the deceased having left a written desire to this effect. Where cremation is desired, however, clear instructions in writing should be given to the person who is likely to be responsible for the funeral arrangements, since a deceased person may otherwise be *buried* against his or her own wishes. The mere expression in a will of a desire for cremation is not always sufficient, since a will may not be read until after the funeral.<sup>2</sup>

### **No Cremation of an Unidentified Body.**

It shall not be lawful to cremate human remains which have not been identified. (*Regulation 5.*)

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<sup>1</sup> See also Cremation Act, 1952, s. 1 (1), *supra*, p. 138.

<sup>2</sup> The Cremation Society, 47 Nottingham Place, London, W.1, will register, free of charge, a person's desire for cremation, and will supply a printed form containing an expression of that desire for the information and use of the executor or other person responsible for the funeral arrangements. A Form of Request for those desirous of being cremated after death is published by Shaw & Sons Ltd., under Cat. No. CB 20.



**No Cremation Until the Death has been Properly Registered or a Coroner's Certificate for Cremation has been Given.**

By *Regulation 6* of the **Cremation Regulations, 1930**, no cremation is to be allowed until the death of the deceased has been duly registered,<sup>1</sup> except in the following cases:—

- (i) where an Inquest has been held or a Post-Mortem Examination has been made<sup>2</sup> and the Coroner has given a Certificate for Cremation in the prescribed form<sup>3</sup>; or
- (ii) where the Registrar of Deaths has certified that the death of the deceased is not required by law to be registered in England.

**No Cremation Unless the Required Forms have been Duly Completed.**

Under *Regulations 7*<sup>4</sup> and *8*, four documents will normally have to be completed, namely:—

1. Form A.—Application for Cremation.
2. Form B.—Certificate of Medical Attendant.
3. Form C.—Confirmatory Medical Certificate.
4. Form F.—Authority to Cremate.

Forms D and E are only used where a Post-Mortem Examination has been made or a Coroner's Inquest has been held.<sup>5</sup>

The nature of the above documents and the various requirements regarding their completion must now be examined in detail.

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<sup>1</sup> For the procedure regarding the notification and registration of deaths, see Chapter 5, pp. 84 to 94, *supra*.

<sup>2</sup> For the position regarding Post-Mortem Examinations and Inquests, see Chapter 5, pp. 93 and 94, *supra*.

<sup>3</sup> Form E—see *Regulation 8*, *infra*.

<sup>4</sup> As substituted by *Regulation 1 (1)* of the **Cremation Regulations, 1952**.

<sup>5</sup> See *Regulation 8 (b), (c) and (d)*, p. 149, *infra*.



**APPLICATION FOR CREMATION (FORM A).****General Position.**

No cremation shall be allowed to take place unless an application is made in the prescribed form (Form A<sup>1</sup>) and the information requested in that form has been duly furnished. (*Regulation 7 (1).*<sup>2</sup>)

It is important to note that by **section 2 of the Cremation Act, 1952**, the particulars in an Application for Cremation are no longer required to be confirmed by a Statutory Declaration under the **Statutory Declarations Act, 1835**.

**By Whom an Application for Cremation Must be Made.**

*Regulation 7 (2)*<sup>2</sup> provides that the Application must normally be signed by an *executor* or the *nearest relative* of the deceased, but it may be signed by some other person if the Cremation Authority is satisfied that that person is a proper one to have signed, *and* a satisfactory reason is given on the Application why it is not signed by an executor or the nearest relative but by that other person.

**Nature and Contents of an Application for Cremation (Form A).**

After stating his own name, address and occupation, the Applicant applies to the Cremation Authority to undertake the cremation, giving the deceased's name, address, occupation, age and sex, and stating whether married, widow, widower, or unmarried.

Form A then requires the Applicant to furnish information under the following eleven heads:—

1. Are you an executor or the nearest surviving relative of the deceased ?

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<sup>1</sup> The Form is now set out in the Schedule to the Cremation Regulations, 1952, and has been substituted for Form A of the 1930 Regulations: Cremation Regulations, 1952, *Regulation 1 (2)*. It is printed by Shaw & Sons Ltd., under Cat. No. CB 5.

<sup>2</sup> As substituted by *Regulation 1 (1)* of the Cremation Regulations, 1952.



2. If not, state
  - (a) Your relationship to the deceased.
  - (b) The reason why the application is made by you and not by an executor or any nearer relative.
3. Did the deceased leave any written directions as to the mode of disposal of his or her remains ? If so, what ?
4. Have the near relatives<sup>1</sup> of the deceased been informed of the proposed cremation ?
5. Has any near relative<sup>1</sup> of the deceased expressed any objection to the proposed cremation ? If so, on what ground ?
6. What was the date and hour of the death of the deceased ?
7. What was the place where the deceased died ? (Give address and say whether own residence, lodgings, hotel, hospital, nursing home, etc.)
8. Do you know, or have you any reason to suspect, that the death of the deceased was due, directly or indirectly, to
  - (a) violence;
  - (b) poison;
  - (c) privation or neglect ?
9. Do you know any reason whatever for supposing that an examination of the remains of the deceased may be desirable ?
10. Give name and address of the ordinary medical attendant of the deceased.
11. Give names and addresses of the medical practitioners who attended the deceased during his or her last illness.

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<sup>1</sup> The term "near relative" as here used includes a widow or widower, parents, children above the age of 16, and any other relative usually residing with the deceased.

The Applicant must then declare, by signing and dating the Form, that to the best of his knowledge and belief the information given is correct and no material particular has been omitted.

Finally, in accordance with *Regulation 7 (3)*,<sup>1</sup> the Application must be verified by being countersigned by any authorised person (*see below*), who must specify the capacity in which he signs and state that the Applicant is known to him and that there is no reason to doubt the truth of any of the information furnished by the Applicant.

**By Whom an Application for Cremation Must be Verified by Countersignature.**

Under *Regulation 7 (3)*<sup>1</sup> of the **Cremation Regulations, 1930**, any of the following persons are authorised to verify and countersign an Application for Cremation, provided the Applicant is known to them and they have no reason to doubt the truth of any of the information furnished by the Applicant:—

- (a) a Member of Parliament;
- (b) a Justice of the Peace;
- (c) a minister of religion;
- (d) an advocate, barrister or solicitor;
- (e) a registered medical practitioner or registered dental practitioner;
- (f) an officer on the active or half pay or pensions lists of any of Her Majesty's naval, military or air forces;
- (g) a person on the active or pension list of the permanent civil service of the Crown who is, or was at the date of his retirement, of the rank of clerical officer or equivalent or higher rank and is not less than twenty-one years of age;
- (h) a manager or cashier of a bank;

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<sup>1</sup> As substituted by *Regulation 1 (1)* of the **Cremation Regulations, 1952**.



- (i) a teacher at a school recognised by the Ministry of Education or the Secretary of State or at a university or university college;
- (j) a police officer not below the rank of sergeant;
- (k) a member or the clerk of a local authority; or
- (l) the secretary of a trade union, registered friendly or approved society or branch of a trade union or registered branch of a friendly society.

## TWO MEDICAL CERTIFICATES NORMALLY REQUIRED BEFORE CREMATION (FORMS B AND C).<sup>1</sup>

Under *Regulation 8 (a)* of the **Cremation Regulations, 1930**, cremations are not normally allowed unless:—

- (i) a *Certificate of Medical Attendant* in Form B<sup>2</sup> has been given by a registered medical practitioner who has attended the deceased during his last illness and who can certify definitely as to the cause of death; *and*
- (ii) a *Confirmatory Medical Certificate* in Form C<sup>3</sup> has been given by another registered medical practitioner who,<sup>4</sup> if not the Medical Referee,<sup>5</sup> must be of at least 5 years' standing and not a relative of the deceased nor a relative or partner of the doctor who gave the Medical Certificate in Form B.

It should be observed that both Certificates require the practitioner to certify that he knows of "no reasonable cause to suspect that the deceased died either a violent or an unnatural death or a sudden death of which the

<sup>1</sup> Medical Certificates (Forms B and C) with Authority to Cremate (Form F) are printed in a single document by Shaw & Sons Ltd., under Cat. No. CB 6.

<sup>2</sup> This Form is set out in the Schedule to the Cremation Regulations, 1930. It contains no less than eighteen questions for the medical practitioner to answer to the best of his knowledge and belief.

<sup>3</sup> This Form is also set out in the Schedule to the Cremation Regulations, 1930, and requires, *inter alia*, answers to some eight questions.

<sup>4</sup> By *Regulation 9* of the Cremation Regulations, 1930.

<sup>5</sup> For the functions and duties of Medical Referees of Cremation Authorities, see pp. 150 to 152, *infra*.



cause is unknown, or died in such place or circumstances as to require an inquest in pursuance of any Act ”.

### CIRCUMSTANCES IN WHICH TWO MEDICAL CERTIFICATES ARE NOT REQUIRED.<sup>1</sup>

In the following circumstances, *Regulation 8 (b), (c) and (d)* of the **Cremation Regulations, 1930**, enable a cremation to take place without the two Medical Certificates normally required under *Regulation 8 (a)* above:—

- (i) Where a *Post Mortem-Examination* has been made by a medical practitioner expert in pathology appointed by the Cremation Authority (or in the case of emergency appointed by the Medical Referee), and he has given a Certificate in Form D<sup>2</sup> (*Regulation 8 (b)*); or
- (ii) Where a *Post-Mortem Examination* has been made and the cause of death has been certified by the Coroner, who has given a Certificate in Form E<sup>3</sup> (*Regulation 8 (c)*); or
- (iii) Where an *Inquest* has been held and a Certificate in Form E<sup>3</sup> has been given by the Coroner. Such a Certificate, with the necessary modifications, may also be given by a Coroner without waiting for the termination of the Inquest in any case in which the death occurs in connection with an industrial, railway, flying or road accident and the Coroner adjourns the Inquest with a view to the investigation of the causes of the accident. (*Regulation 8 (d)*).

<sup>1</sup> See also the special position regarding the cremation of (i) a body which has been buried for at least one year; and (ii) a still-born child, *infra*, p. 153.

<sup>2</sup> Form D in the Schedule to the Cremation Regulations, 1930, sets out the prescribed “Certificate after Post-Mortem Examination” and in it the medical practitioner, *inter alia*, states the cause of death and that he is satisfied there is no reason for the holding of an Inquest. It is printed by Shaw & Sons Ltd., under Cat. No. CB 8.

<sup>3</sup> Form E in the Schedule to the Cremation Regulations, 1930, sets out the prescribed “Coroner’s Certificate”, in which the Coroner, *inter alia*, states the cause of death and that he is satisfied that no circumstance exists which could render necessary any further examination of the remains or any analysis of any part of the body.



**NECESSITY IN ALL CASES FOR AN  
"AUTHORITY TO CREMATE" (FORM F)  
SIGNED BY THE MEDICAL REFEREE OR  
DEPUTY MEDICAL REFEREE OF THE  
CREMATION AUTHORITY.**

*Regulation 8* finally provides that no cremation shall take place except on the written authority of the Medical Referee given in Form F.<sup>1</sup>

As set out in the Schedule to the **Cremation Regulations, 1930**, Form F requires the Medical Referee, before he formally authorises cremation to recite that he is satisfied:—

- (i) that all the statutory requirements have been complied with;
- (ii) that the cause of death has been definitely ascertained; and
- (iii) that there exists no reason for any further inquiry or examination.

**QUALIFICATIONS, APPOINTMENT AND DUTIES  
OF MEDICAL REFEREES AND THEIR  
DEPUTIES.**

**Qualifications and Appointment.**

Every Cremation Authority must have a Medical Referee and a Deputy Medical Referee, who must be registered medical practitioners of not less than *five years'* standing and must possess such experience and qualifications as will fit them for the discharge of their statutory duties. If otherwise qualified, a Coroner or Medical Officer of Health may be appointed. (*Regulation 10.*)

The Home Secretary must *appoint* as Medical Referee and Deputy Medical Referee such fit persons as may be *nominated* by the Cremation Authority. (*Regulation 10.*)

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<sup>1</sup> A separate Form F is printed by Shaw & Sons Ltd., under Cat. No. CB 7. For a document including both Medical Certificates (Forms B and C) and the Authority to Cremate (Form F), see footnote <sup>1</sup>, p. 148, *supra*.



### General Powers and Obligations.

The Deputy Medical Referee must act in the absence of the Medical Referee and in any case in which the Medical Referee has been the medical attendant of the deceased. (*Regulation 10.*)

In an emergency any Medical Referee or Deputy Medical Referee appointed for one Cremation Authority may act as the Medical Referee or Deputy Medical Referee of another Authority. (*Regulation 10.*)

If a Medical Referee has personally investigated the cause of death, he may give a *Confirmatory Medical Certificate* (Form C), and if he has carried out a post-mortem he may give a *Certificate after Post-Mortem Examination* (Form D). Where the Medical Referee is a Coroner, he may himself give a *Coroner's Certificate* (Form E). (*Regulation 11.*)

### Principal Duties of Medical Referees.

The principal duties of a Medical Referee of a Cremation Authority are laid down by *Regulation 12* of the **Cremation Regulations, 1930**, and may be stated as follows:—

1. No cremation must be allowed by the Medical Referee if it appears that the deceased left a written direction to the contrary. (*Regulation 12 (1).*)
2. No cremation must be allowed by the Medical Referee unless he is satisfied that the death has been properly registered by the Registrar of Deaths *or* a Coroner's Certificate (Form E) has been issued after a Post-Mortem Examination or Inquest. (*Regulation 12 (2).*)
3. Before allowing any cremation, the Medical Referee must examine the relevant Application and Certificates to ascertain that the statutory requirements have been complied with and that



the inquiry made by the persons giving the Certificates has been adequate. (*Regulation 12(3).*)

4. The Medical Referee must not allow a cremation unless he is satisfied that the Application is made by an executor or by the nearest surviving relative of the deceased, or, if made by any other person, that the fact that the executor or nearest relative has not made the Application is sufficiently explained, and that the person making the application is a proper person to do so. (*Regulation 12 (4).*)
5. No cremation must be allowed by the Medical Referee unless he is satisfied that the fact and cause of death have been definitely ascertained. (*Regulation 12 (5).*)
6. If it appears that the death was due to poison, violence, any illegal operation, privation or neglect, or if there is any suspicious circumstance whatsoever, whether revealed in the Certificates or otherwise coming to his knowledge, the Medical Referee must decline to allow the cremation unless an Inquest is held and a Coroner's Certificate (Form E) is given. (*Regulation 12 (6).*)
7. If a Coroner has given notice that he intends to hold an Inquest on the body, the Medical Referee must not allow the cremation to take place until the Inquest has been held. (*Regulation 12 (7).*)
8. The Medical Referee must make such reports to the Home Secretary as may from time to time be required. (*Regulation 12 (9).*)

In regard to the Medical Referee's functions generally, it is important to note that he may in *any* case decline to allow cremation *without stating any reason*.<sup>1</sup>

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<sup>1</sup> Cremation Regulations, 1930, *Regulation 12 (8)*.



### **SPECIAL POSITION REGARDING THE CREMATION OF A BODY WHICH HAS BEEN BURIED FOR AT LEAST ONE YEAR.**

Where it is intended to cremate the remains of a deceased person who has already been buried for not less than one year, none of the Statutory Forms referred to on page 144 need be completed and the provisions contained in *Regulations* 5 to 12 above do not apply. Such a cremation is governed by, and subject to, any conditions the Home Secretary may impose in his exhumation licence or otherwise. (*Regulation* 13.)

### **SPECIAL POSITION REGARDING THE CREMATION OF A STILL-BORN CHILD.**

By *Regulation* 15 of the **Cremation Regulations, 1930**, the Medical Referee may permit the cremation of the remains of a still-born child if it is certified to be still-born by a registered medical practitioner after examination of the body, and if the Referee after such inquiries as he may think necessary is satisfied that it was still-born, and that there is no reason for further examination.<sup>1</sup>

Before permitting the cremation, however, the Medical Referee must have received *either* the original, or a duly issued Duplicate, *Certificate for Disposal* showing that the still-birth has been properly registered by the Registrar of Deaths<sup>2</sup> or a *Coroner's Certificate* (Form E) if an Inquest has been held.

### **DISPOSAL OF ASHES.**

After the cremation of the remains of a deceased person the ashes must be given into the charge of the person who applied for the cremation, if he so desires.

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<sup>1</sup> A Form of Application for the Cremation of a Still-born Child is printed by Shaw & Sons Ltd., under Cat. No. CB 12. The relevant form of Medical Certificate, with Authority to Cremate (Form F), is also available under Cat. No. CB 13.

<sup>2</sup> For details regarding the registration of still-births, see Chapter 5, pp. 85 and 86, *supra*.



If not, they must be retained by the Cremation Authority, and, in the absence of any special arrangement for their burial or preservation, they must *either* be decently interred in a burial ground or in land adjoining the crematorium reserved for the burial of ashes, *or* be scattered thereon.<sup>1</sup> In the case of ashes left temporarily in the charge of the Cremation Authority and not removed within a reasonable time, a *fortnight's notice* must be given to the person who applied for the cremation before the remains are interred or scattered.<sup>2</sup>

In *Re Kerr*,<sup>3</sup> it was **held** that the cremated remains of a parishioner could be buried in a sealed urn under the floor of the parish church which had previously been closed for burials, *provided* the necessary Faculty was obtained and a proper fee for the interment was paid to the incumbent of the parish.

## REGISTRATION AND NOTIFICATION OF CREMATIONS.

### Registration in the Register of Cremations.

*Regulation 17* of the **Cremation Regulations, 1930**, requires every Cremation Authority to appoint a Registrar who must keep a Register in the prescribed form (Form G<sup>4</sup>) of all cremations carried out by the Authority. The Registrar must make the entries relating to each cremation *immediately after* the cremation has taken place, except that the entry in the last column, relating to the disposal of ashes, is to be completed as soon as the remains of the deceased have been handed to the relatives or otherwise disposed of.

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<sup>1</sup> Forms relating to Cremated Remains are printed by Shaw & Sons Ltd., and include the following:—Identification Card (Cat. No. CB 1); Authority to Scatter (Cat. No. CB 9); Authority to Forward for Disposal (Cat. No. CB 10); and, Authority to Collect Casket or Urn (Cat. No. CB 21). Registers of Scattering of Ashes and Books of Remembrance can also be supplied to order.

<sup>2</sup> Cremation Regulations, 1930, *Regulation 16*.

<sup>3</sup> [1894] P. 284.

<sup>4</sup> Registers of Cremations are printed by Shaw & Sons Ltd., under Cat. No. BUR-G.



The prescribed Register of Cremations<sup>1</sup> contains the following particulars:—

1. No.
2. Date of Cremation.
3. Name, Residence and Occupation of Deceased.
4. Age and Sex.
5. Whether married or unmarried.
6. Date of Death.
7. Name and Address of Person who Applied for Cremation.
8. Names and Addresses of Persons Signing Certificates.
9. District where Death has been Registered.
10. How Ashes were Disposed of.

#### **Notification of Cremation to the Registrar of Deaths.**

Within 96 *hours* of the cremation of the body of any deceased person, *Regulation* 19 requires the Registrar of the Cremation Authority to send to the Registrar of Deaths for the district in which the death occurred Notification of Cremation of the body and of the date and place of cremation. Such a Notification is normally sent on the detachable portion (Part C) of the Certificate for Disposal issued by the Registrar of Deaths, but where there is a Coroner's Certificate for Cremation (Form E) the Notification must be sent upon the appropriate portion of that Certificate.<sup>2</sup>

#### **PRESERVATION OF CREMATION DOCUMENTS.**

*Regulation* 20<sup>3</sup> of the **Cremation Regulations, 1930**, requires the Cremation Authority to number, file in order, and carefully preserve all Applications, Certificates and other documents relating to every cremation for a period of 15 *years* from the date of the cremation to which they relate. After that period, the Cremation Authority

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<sup>1</sup> See Form G of the Schedule to the Cremation Regulations, 1930.

<sup>2</sup> The appropriate portion of a Coroner's Certificate is headed "Notification of Cremation". It is prescribed by *Regulation* 18, and is set out in Form E of the Schedule to the Cremation Regulations, 1930.

<sup>3</sup> As amended by *Regulation* 3 of the Cremation Regulations, 1952.



may, if they think fit, destroy the relevant Applications, Certificates, or other documents, but it is important to note that the Register of Cremations, or any part of it, must *never* be destroyed.

### CODE OF CREMATION PRACTICE.

In 1954, the Federation of British Cremation Authorities revised and re-issued the following important Code of Cremation Practice<sup>1</sup>:—

1. The cremation of a human body is a highly emotional occasion for many of those taking part in the service. This should never be forgotten by the officials of the Crematorium, who should combine to create and maintain an atmosphere of reverence and respect throughout the entire proceedings.
2. The funeral director shall observe the regulations drawn up by the Cremation Authority. He is responsible for the provision of sufficient bearers to convey the coffin reverently from the hearse to the catafalque. When the coffin is in position on the catafalque or deposited in the rest room or Chapel of Repose at the Crematorium his responsibility towards it ceases, and that of the Cremation Authority begins.
3. No official of a Cremation Authority shall conduct the business of a funeral director.
4. A body shall not be removed from the Crematorium after the Service of Committal.
5. No portion of the coffin or its contents shall be removed following the Committal Service;

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<sup>1</sup> The contents of this Code have, of course, no statutory sanction or authority, but they would nevertheless appear to be relevant in ascertaining the standard of care to be expected from Cremation Authorities at common law. The Code is accordingly set out here, and is reproduced with kind permission of the Federation of British Cremation Authorities. For the favourable reception of this voluntary Code of Cremation Practice by the Interdepartmental Cremation Committee appointed in 1947, see pp. 7 and 8 of their Official Report, Cmd. 8009 of 1950.



they shall be put into the cremator exactly as they are received on the catafalque.

6. Once a coffin, with its contents, has been placed in the cremator, it shall not be touched or interfered with until the process of incineration is completed.
7. No person shall be permitted to enter the committal room without the express permission of the superintendent. In cases where the representatives of the deceased express the desire to witness the placing of the coffin in the cremator, the superintendent shall give permission to two representatives to enter for this purpose.
8. Each body, whether adult or child, given to the care of the Cremation Authority shall be cremated separately. An exception shall be permitted in appropriate cases, when mother and baby may be cremated in the same coffin, provided the necessary Authority to Cremate has been granted in both cases.
9. It frequently occurs that ornaments and rings, or dentures, of gold and other precious metals, are present on the body brought for cremation. In the process of Cremation these metals are not destroyed, but are present, in dull, misshapen form among the ashes. Care should be taken to separate such metals from the ashes, and a receptacle should be provided in which they should be retained for subsequent disposal in accordance with the directions of the Cremation Authority, or higher Authority.
10. The utmost care shall be taken to ensure that the ashes resulting from each cremation shall be kept separate. Following their removal from the cremator, the ashes shall be reduced and



placed in separate containers whilst awaiting final disposal. If the ashes are to be scattered on the Garden of Rest, the ceremony shall be conducted with the greatest reverence and respect. In cases where the ashes are to be sent by rail or through the post, specially constructed containers shall be provided for this purpose, suitably labelled.

11. All mechanical apparatus used in a Crematorium shall be regularly overhauled and cleaned to ensure its being kept in perfect working order, and to prevent friction noises which are calculated to distract or disturb the mourners. Special attention should be paid to mechanical devices which are particularly prone to develop imperfections.
12. The greatest care should be taken in the appointment of members of the Crematorium staff, any one of whom may, by conduct or demeanour, detract from the atmosphere of reverence which it is endeavoured to create. In addition, it should be realised that the wrong type of man is capable of comment outside the Crematorium calculated to bring the Crematorium and Cremation into disrepute.

### DEVELOPMENT OF CREMATION IN GREAT BRITAIN.<sup>1</sup>

Since the first crematorium was opened at Woking in 1885, no less than 1,149,507 cremations had been carried out in Great Britain by the end of the year 1954.

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<sup>1</sup> The statistics which follow are derived from Tables compiled by the Cremation Society and published in the Official Journal of the Cremation Movement, *Pharos*, Vol. 21, No. 1, pp. 4 and 5. For an excellent survey of cremation abroad, see "*The Disposal of the Dead*" by C. J. Polson, R. P. Brittain and T. K. Marshall, Part III, Chapter XIV, pp. 130 to 146.

Recent annual total cremations are:—

Year.	Cremations.
1949	79,607
1950	89,557
1951	107,161
1952	107,699
1953	116,728
1954	125,521

In 1924, cremations at the then 16 crematoria in Great Britain totalled 2,395, which represented only 1.5 per cent. of all deaths recorded. Corresponding figures at the end of each decade since are:—

Year.	Crematoria.	Cremations.	% of Deaths.
1934	28	8,337	1.6
1944	58	39,016	7.0
1954	74	125,521	22.26

Cremations in relation to recorded deaths during the fifteen years 1940-1954 are shown in the following table:—

CREMATIONS in relation to DEATHS.  
1940-1954.

YEAR	DEATHS	CREMATIONS	%
1940	654,312	25,199	3.84
1941	607,738	26,221	4.31
1942	545,100	28,518	5.23
1943	568,145	34,259	6.03
1944	556,779	39,016	7.00
1945	550,763	42,963	7.80
1946	556,695	50,160	8.90
1947	583,813	61,160	10.47
1948	531,247	64,288	12.12
1949	574,319	79,607	13.86
1950	574,309	89,557	15.59
1951	614,718	107,161	17.43
1952	558,790	107,699	19.27
1953	562,303	116,728	20.76
1954	563,128	125,521	22.26



As regards the future, it may well be that the number of cremations will increase at an even more rapid rate, since more local authorities are being encouraged to establish crematoria in view of the growing demand for cremation services and the need to economise in the use of urban land.<sup>1</sup> The cost of cremation is relatively inexpensive, since there is no grave to buy and no tombstone to provide and maintain. Although ignorance and lack of facilities hindered the development of cremation for many years, increasing public enlightenment and available facilities now make it difficult to foresee any real limits to the future growth of the practice in this country.

### 3.—CREMATION OFFENCES AND PENALTIES.

#### GENERAL POSITION AT COMMON LAW.

At common law, it was held in *R. v. Price*<sup>2</sup> and in *R. v. Stephenson*<sup>3</sup> that the burning of a dead body, instead of burying it, was not a misdemeanour, unless (i) a public nuisance was created, or (ii) the Coroner was prevented from holding an Inquest.

#### POSITION UNDER STATUTE LAW.

**Contravention of the Cremation Act, 1902, or of any Regulation made thereunder.**

By section 8 (1) of the Cremation Act, 1902:—

**Every person who shall contravene any Cremation Regulation, or shall knowingly carry out or procure or take part in the burning of any human remains except in accordance with such regulations and the provisions**

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<sup>1</sup> No less than 500 acres of land are normally required each year for burial purposes.

<sup>2</sup> (1884), 12 Q.B.D. 247.

<sup>3</sup> (1884), 13 Q.B.D. 331.



of this Act, shall (in addition to any liability or penalty which he may otherwise incur) be liable, on summary conviction, to a penalty not exceeding **FIFTY POUNDS** [£50]: Provided that any person aggrieved by any conviction may appeal therefrom to quarter sessions.

#### **False Representation or Certificate to Procure Cremation.**

Section 8 (2) of the Cremation Act, 1902,<sup>1</sup> provides:—

Every person who shall wilfully make any false representation, or sign or alter any certificate, with a view to procuring the burning of any human remains shall (in addition to any penalty or liability which he may otherwise incur) be liable to imprisonment not exceeding **TWO YEARS**.

#### **Procuring or Applying for Cremation with Intent to Conceal any Offence.**

By section 8 (3) of the Cremation Act, 1902<sup>2</sup>:—

Every person who, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body, or, with such intent, makes any application or gives any certificate under this Act, shall be liable on conviction on indictment to imprisonment for a term not exceeding **FIVE YEARS**.

In *R. v. Byers*,<sup>3</sup> it was **held** that the word “cremation” in the above provision means “cremation in a crematorium”, and not merely the burning of a body in the prisoner’s own house. Such a burning would, of course, be an offence under **section 8 (1)** above.

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<sup>1</sup> As slightly amended by the Perjury Act, 1911, s. 17 and Schedule, and by the Criminal Justice Act, 1948, s. 1 (2).

<sup>2</sup> As amended by the Criminal Justice Act, 1948, s. 1 (1), and by the Cremation Act, 1952, s. 2 (3).

<sup>3</sup> (1907), 71 J.P. 205.



**Destruction or Falsification of Registers of Cremations.**

**Section 7 of the Cremation Act, 1902**, provides, *inter alia*, that all statutory provisions relating to the destruction and falsification of Registers of Burials shall apply to Registers of Cremations. The principal provisions in this connection are contained in **section 36 of the Forgery Act, 1861**,<sup>1</sup> and in **section 3 (2) (a) of the Forgery Act, 1913**.<sup>2</sup>

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<sup>1</sup> See Chapter 6, pp. 115 and 116.

<sup>2</sup> See Chapter 6, p. 116, *supra*.

**PART III.**

**The Law Relating to Exhumation  
and Disused Burial Grounds**





## CHAPTER 9

### EXHUMATION POWERS, PROCEDURE AND OFFENCES, AND THE UTILISATION AND DEVELOPMENT OF DISUSED BURIAL GROUNDS.

#### 1.—EXHUMATION POWERS, PROCEDURE AND OFFENCES.<sup>1</sup>

#### GENERAL POSITION REGARDING EXHUMATION APART FROM THE REQUIREMENTS OF SECTION 25 OF THE BURIAL ACT, 1857.

##### Unauthorised Disinterment of Dead Bodies Illegal at Common Law.

In *R. v. Lynn*<sup>2</sup> and *R. v. Sharpe*,<sup>3</sup> it was held that the removal of a body from any burial ground without lawful authority was an indictable misdemeanour at common law whatever the actual motive for the removal might be. As Byles, J., said in *Foster v. Dodd*<sup>4</sup>:—

“A dead body by law belongs to no one, and is, therefore, under the protection of the public. If it lies in consecrated ground, the ecclesiastical law will interpose for its protection; but, whether in ground consecrated or unconsecrated, indignities offered to human remains in improperly and indecently disinterring them, are the ground of an indictment.”

Even where human remains were not disturbed in an improper and indecent manner but were dug up in the course of excavations on a disused burial ground, it

<sup>1</sup> For a valuable account of current opinions and practice regarding exhumation, see “*The Disposal of the Dead*”, by C. J. Polson, R. P. Brittain and T. K. Marshall, Part V, Chapter XVIII, pp. 190 to 210.

<sup>2</sup> (1788), 2 Term Rep. 733.

<sup>3</sup> (1857), Dears. & B. 160.

<sup>4</sup> (1867), L.R. 3 Q.B. 67, at p. 77.



was held in *R. v. Jacobson*<sup>1</sup> that the defendant was nevertheless guilty of a misdemeanour at common law.<sup>2</sup>

### Common Law Power of a Coroner to Order the Disinterment of a Body in Certain Cases.

Within a reasonable time after the burial of a body, the Coroner can order its disinterment for the purpose of holding a first or further Inquest.<sup>3</sup>

### Necessity for a Faculty where a Body is to be Removed from Consecrated Ground.

Under ecclesiastical law, a Faculty was always required before a body could be removed from *consecrated* ground, and in *Adlam v. Colthurst*<sup>4</sup> the removal of human remains from a churchyard into an adjoining field without a Faculty was accordingly held to be illegal, the defendant being ordered to replace them within six days and to certify that he had done so.

In addition to the issue of Faculties for the removal of human remains from one consecrated place of burial to another on the ground of family reasons, Faculties have been granted, *inter alia*, for the following purposes:—

- (i) to establish the identity of a body;  
(*Re Sarah Pope*<sup>5</sup>; *R. v. Tristram*<sup>6</sup>; and *Druce v. Young*.<sup>7</sup>)

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<sup>1</sup> (1880), 14 Cox C.C. 522.

<sup>2</sup> For a subsequent statutory restriction preventing the erection of buildings on disused burial grounds, see the Disused Burial Grounds Act, 1884, s. 3, p. 174, *infra*.

<sup>3</sup> Stanforde's *Les Pleas del. Coron.* 51; Hale's *Summary* 170; 2 Hawk. P.C. c. 9, s. 23. For an appropriate form of Warrant to Exhume, see now the Coroners Rules, 1953, S.I. 1953 No. 205, Third Schedule, Form 2.

<sup>4</sup> (1867), L.R. 2 A. & E. 30.

<sup>5</sup> (1851), 15 Jur. 614.

<sup>6</sup> [1898] 2 Q.B. 371.

<sup>7</sup> [1899] P. 84.



- (ii) to obtain certain important papers which had been buried in the deceased's coffin;  
(*Re Edward Hall*.<sup>1</sup>)
- (iii) to remove human remains from a parish church on the grounds of public health<sup>2</sup>;  
(*Rector, etc., of St. Helen's, Bishopgate, with St. Mary, Outwich v. Parishioners*.<sup>3</sup>)
- (iv) to enable adjoining roads or streets to be widened;  
(*St. Boltoph without Aldgate (Vicar) v. Parishioners*<sup>4</sup>; *St. Nicholas, Leicester (Vicar) v. Langton*<sup>5</sup>; and *Re Bideford Parish, Ex parte Bideford (Rector, etc.)*.<sup>6</sup>)
- (v) to remove the body of a former superior of a Roman Catholic Theological College from consecrated ground in a churchyard to unconsecrated ground under the College Chapel, where three other former superiors were buried.  
(*Re Talbot*.<sup>7</sup>)

In subsequent proceedings in *R. v. Tristram*,<sup>8</sup> the Divisional Court **held** that, where a body was buried in consecrated ground belonging to a cemetery company, there was no power to include in a Faculty any order actually *requiring* the company to make, or even to allow, the disinterment. Regarding the refusal of a Faculty in *Re Dixon*<sup>9</sup> for the purpose of cremating a body which had been buried in consecrated ground for eighteen years, it is important to note that the general growth

<sup>1</sup> (1893), unreported, but cited in *R. v. Tristram*, [1898] 2 Q.B. 371, at pp. 372 and 373.

<sup>2</sup> Under s. 23 of the Burial Act, 1857, exhumation may be required by an Order in Council, issued on representation from the Minister of Housing and Local Government, so as to prevent any vaults or places of burial from becoming or continuing dangerous or injurious to public health.

<sup>3</sup> [1892] P. 386.

<sup>4</sup> [1892] P. 161.

<sup>5</sup> [1899] P. 19.

<sup>6</sup> [1900] P. 314.

<sup>7</sup> [1901] P. 1.

<sup>8</sup> (1899), 80 L.T. 414.

<sup>9</sup> [1892] P. 386.



and acceptance of the practice of cremation during the present century renders it unlikely that an application for a Faculty for the disinterment of a body in order to cremate it would now be refused in a proper case.

**Revocation of Faculty obtained by Misrepresentation and Exceeded in Authority.**

Where a Faculty was obtained on a representation that the coffins and remains to be removed did not exceed twenty in number and, without any further authority, between four hundred and five hundred more coffins were disinterred, it was **held** in *St. Pancras Vestry v. St. Martin-in-the-Fields (Vicar and Churchwardens)*<sup>1</sup> that the vicar and churchwardens:—

- (i) had exceeded the powers confided to them by the Faculty;
- (ii) were to return the Faculty to the Diocesan Registry;
- (iii) must decently reinter all the remains in their original position; and
- (iv) pay the costs of the proceedings.

**LICENCE OF THE HOME SECRETARY REQUIRED BEFORE EXHUMATION IN CERTAIN CASES UNDER SECTION 25 OF THE BURIAL ACT, 1857.**

Section 25 of the Burial Act, 1857, provides:—

Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary<sup>2</sup> for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her

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<sup>1</sup> (1860), 6 Jur. N.S. 540.

<sup>2</sup> As a general rule, the Ordinary is the appropriate Diocesan authority for the grant of Faculties and he is normally the Anglican Bishop of the Diocese who acts in the matter through the Chancellor of the Consistory Court for the Diocese, the Faculty being issued on his behalf by the Diocesan Registrar.



Majesty's Principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding TEN POUNDS [£10].

By section 7 (1) of the Fees (Increase) Act, 1923:—

Where a Secretary of State issues a licence under section twenty-five of the Burial Act, 1857, for the removal of any body, or the remains of any body, which has been interred in any place of burial, there shall be payable in respect of the licence such fee, not exceeding TWO POUNDS [£2], as the Secretary of State, with the consent of the Treasury, may prescribe.

Under an Order dated 3rd May, 1923,<sup>1</sup> the maximum fee of £2 is prescribed in respect of each licence.

Section 7 (2) of the Fees (Increase) Act, 1923, empowers the Home Secretary to pay any part of the fee to a local authority whose authorised officer duly performs any duties in connection with the removal of any body or remains after burial. In practice, a sum of *ten shillings* is normally paid to the local authority, who in many cases allow their sanitary inspector, or other specialised officer, supervising the exhumation to retain the fee.

#### CASES WHERE BOTH AN ECCLESIASTICAL FACULTY AND A LICENCE FROM THE HOME SECRETARY ARE REQUIRED.

As already stated,<sup>2</sup> a Faculty has always been required under ecclesiastical law whenever a body is removed

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<sup>1</sup> See S.R. & O. Rev. 1948, vol. xix, p. 934.

<sup>2</sup> *Supra*, p. 166.



from *consecrated ground whatever the purpose of the removal might be*. Regarding the exceptional cases expressly provided for in **section 25 of the Burial Act, 1857**,<sup>1</sup> where a licence from the Home Secretary is *not* required, it is important to note that the exception only applies **where a body is removed from one consecrated place of burial to another** and, therefore, *both* a Faculty and a Licence will normally be necessary where the exhumation is for some purpose<sup>2</sup> other than that of removal "from one consecrated place of burial to another".

The relationship between an ecclesiastical Faculty and a civil Licence was considered, *inter alia*, by the Divisional Court in *R. v. Tristram*,<sup>3</sup> where it was **held**:—

- (i) that a Faculty only authorises that which without a Faculty would be an ecclesiastical offence, and accordingly does *not* dispense with any statutory requirements regarding the disinterment or removal of the bodies of the dead;
- (ii) that the jurisdiction to grant Faculties for the exhumation of bodies buried in consecrated ground is not affected by **section 25 of the Burial Act, 1857**<sup>1</sup>;
- (iii) that the disinterment of a body from consecrated ground *for the purpose of identification* required *both* a Faculty for removal and a Licence from the Home Secretary; and
- (iv) although the Faculty can be granted before the Licence where both are necessary, such a Faculty is inoperative and must not be carried into effect until the Licence has been obtained.

<sup>1</sup> For the wording of this important provision, see pp. 168 and 169, *supra*.

<sup>2</sup> See, for example, heads (i), (ii) and (v), pp. 166 and 167, *supra*.

<sup>3</sup> [1898] 2 Q.B. 371.



Regarding the jurisdiction of the Ordinary to grant a Faculty through the appropriate Ecclesiastical Court, Wills, J., said<sup>1</sup>:—

“The Ordinary, as represented here by the judge of the Consistory Court, is clearly the person in whom jurisdiction over all things which are necessary to be observed for the decent and respectful treatment of the dead in consecrated places of burial is vested. He is the proper person to see that all conditions which the laws of the Church require in relation to the bodies of persons buried in consecrated places of burial are observed, and he has exercised a very ancient jurisdiction to control all matters of that kind. From very ancient times he has exercised an undisputed jurisdiction to grant faculties for the removal of bodies from one consecrated place of burial to another. He also possessed a wider jurisdiction in such matters, as is clear from the case of *In re Sarah Pope*,<sup>2</sup> which was tried before Dr. Lushington, a very great authority. It is clear from Dr. Lushington’s judgment in that case that he considered the jurisdiction to extend beyond a mere case of the removal of a body for the purpose of re-interment. . . . That decision is a very strong authority for supposing (which certainly general principles would lead one to suppose) that the jurisdiction of the Ecclesiastical Court was not confined to cases where for one purpose or another it is necessary or desirable to remove a body from one consecrated place of burial to another, and one can hardly suppose that the authority in whom the custody of the remains of the dead is vested ought to be prevented from exercising his authority, if the paramount claims of justice and public interest require it to be exercised.”

As to the point that the Licence of the Secretary of State is not a condition precedent to the grant of an ecclesiastical Faculty, Wills, J., observed<sup>3</sup>:—

“When an application, therefore, is made to the judge of the Ecclesiastical Court for a faculty to disinter a body buried in consecrated ground, he has got to see

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<sup>1</sup> *Ibid.*, at p. 374.

<sup>2</sup> (1851), 15 Jur. 614. See head (i), p. 166, *supra*.

<sup>3</sup> [1898] 2 Q.B. 371, at p. 376.



what the circumstances are. If the circumstances are such as to bring it within the exception, inasmuch as the licence of the Secretary of State is not required, there is no need, it is clear, to wait for such a licence; and, in my judgment, if the circumstances are such that it does not fall within the exception, and, therefore, the licence of the Secretary of State is necessary for the exhumation, there is nothing in the section to justify the conclusion that the judge of the Ecclesiastical Court is to wait until such licence has been granted to consider whether it is a proper case for what I may call ecclesiastical sanction to be given for the disturbance of the remains. If the Secretary of State grants his licence and the burial has taken place within consecrated ground, the consent of the Ordinary must be obtained; and when two concurrent consents are necessary, what is there to say that the licence of the Secretary of State shall precede even an application to the Ecclesiastical Court for the ecclesiastical sanction? As it seems to me, it comes to this: the ecclesiastical sanction is inoperative in a case where the licence of the Secretary of State is made necessary by the section, unless such licence is obtained, but there is nothing in the section to make the one application necessarily precede the other."

In *Druce v. Young*,<sup>1</sup> it was **held** that, in cases where both a Faculty and a Licence were necessary, **section 25 of the Burial Act, 1857**,<sup>2</sup> did *not* require the Faculty to state that it was only to be acted upon subject to, and in accordance with, a Licence from the Home Secretary.

As regards the practice of the Ecclesiastical Courts in such a case, Dr. Tristram observed in *Re Talbot*<sup>3</sup>:—

"The practice of the Court, where it entertains no doubt that a licence from the Home Secretary is necessary for the removal of remains as ancillary to the faculty, is to decree the faculty subject to the Home Secretary's licence being obtained. But in a case where there is any doubt in the mind of the Court whether a licence is necessary, the practice is to issue the faculty without any

<sup>1</sup> [1899] P. 84.

<sup>2</sup> For the wording of this important provision, see pp. 168 and 169, *supra*.

<sup>3</sup> [1901] P. 1, at p. 6.



such proviso, leaving the party to whom it is granted to apply or not as he may be advised for a licence before taking action on the faculty."

### **SPECIAL STATUTORY EXCEPTIONS WHERE NEITHER A FACULTY NOR A LICENCE IS REQUIRED.**

By section 28 (6) of the **Town and Country Planning Act, 1944**,<sup>1</sup> it is expressly provided that subject to the provisions of Regulations made by the Minister,<sup>2</sup> **no faculty shall be required for the removal and reinterment in accordance with the regulations of any human remains, or for the removal and disposal of any tombstones, monuments or other memorials, and the provisions of section twenty-five of the Burial Act, 1857 (which prohibits the removal of human remains without a licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the regulations.**

Similar statutory exceptions are created where consecrated land and burial grounds are to be used and developed for the purposes of the **New Towns Act, 1946**,<sup>3</sup> and the **Civil Aviation Act, 1949**.<sup>4</sup>

Another exceptional type of case is where the whole or part of a church is pulled down or appropriated to another use under a Scheme made under the **Union of Benefices Measures, 1923 to 1952**,<sup>5</sup> and human remains and memorials are removed by the representatives, relations or friends of persons buried in the church or churchyard.

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<sup>1</sup> As set out in the Eleventh Schedule to the Town and Country Planning Act, 1947.

<sup>2</sup> See now, the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations, 1950, S.I. 1950 No. 792, *infra*, pp. 185 to 189.

<sup>3</sup> See New Towns Act, 1946, s. 6 (1).

<sup>4</sup> See Civil Aviation Act, 1949, s. 32.

<sup>5</sup> See ss. 20 and 21 of the Union of Benefices Measure, No. 2 of 1923, as amended by s. 9 of the Union of Benefices (Amendment) Measure, No. 2 of 1936, and note particularly that the removal and reinterment are subject to any conditions imposed by the Home Secretary.



## 2.—UTILISATION AND DEVELOPMENT OF DISUSED BURIAL GROUNDS.

### GENERAL POSITION UNDER THE DISUSED BURIAL GROUNDS ACT, 1884.

#### Prohibition against the Erection of Secular Buildings on Disused Burial Grounds.<sup>1</sup>

By section 3 of the Disused Burial Grounds Act, 1884:—

It shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting house, or other places of worship.

Section 5 provides, however, that Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament.

With regard to this important exception, the following points and cases should be noted:—

- (i) the exception applies whether the Act under which the sale or disposition is effected was passed before or after 1884;

*(Re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract.)*<sup>2</sup>

- (ii) the exception applies to a sale of land under a local Act of Parliament;

*(Attorney-General v. London Parochial Charities Trustees.)*<sup>3</sup>

- (iii) the exception did *not* apply where the sale of a disused chapel and burial ground was not

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<sup>1</sup> For modern practical purposes, it is important to note that the extensive nature of the 1884 Act prohibition has now been materially affected by the London County Council (General Powers) Act, 1935—see pp. 178 and 179 *infra*—as well as by the Town and Country Planning Acts, 1944 and 1947, pp. 184 and 185, *infra*.

<sup>2</sup> [1895] 1 Ch. 702.

<sup>3</sup> [1896] 1 Ch. 541.

under a special statutory authority *relating to the land itself*, it being insufficient that the persons selling the land had obtained the consent of the Charity Commissioners under **section 24 of the Charitable Trusts Act, 1853**;

*(Re Howard Street Congregational Chapel, Sheffield.)*<sup>1</sup>

- (iv) similarly, the exception did *not* apply to the sale of a "disused burial ground" by the Admiralty under **section 15 of the Admiralty Lands and Works Act, 1864**, since this was merely a *general* statutory power relating to the sale of *any* land no longer required for the public service.

*(London County Council v. Greenwich Corporation.)*<sup>2</sup>

### Meaning of "Disused Burial Ground".

The expression "disused burial ground" is defined by **section 4 of the Open Spaces Act, 1887**,<sup>3</sup> as **any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council**.<sup>4</sup>

<sup>1</sup> [1913] 2 Ch. 690.

<sup>2</sup> [1929] 1 Ch. 305.

<sup>3</sup> This provision replaced the original definition in s. 2 of the Disused Burial Grounds Act, 1884.

<sup>4</sup> The formal closure of burial grounds for burial purposes is normally by Order in Council made upon the representation of the Minister of Housing and Local Government, or his predecessors, under s. 2 of the Burial Act, 1852, where the burial ground was within the Metropolis, and under s. 1 of the Burial Act, 1853, if the burial ground was outside London. By s. 2 of the Burial Act, 1855, the penalty for knowingly and wilfully burying any body in contravention of such an Order is a fine, on summary conviction, not exceeding TEN POUNDS [£10].



For the purposes of the **Disused Burial Grounds Act, 1884**, the expression "burial ground" is now defined by **section 20 of the Open Spaces Act, 1906**, and includes any churchyard, cemetery, or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment.

In *Re Ponsford and Newport District School Board*,<sup>1</sup> the sale of a walled off portion of an unconsecrated piece of land which had never been used for burial purposes was **held** by the Court of Appeal to be a sale of a part of a "disused burial ground", because the land had originally been acquired by a cemetery company and **set apart for the purpose of interment**. The plot was accordingly subject to the prohibition against building imposed by **section 3** of the 1884 Act above.

Similarly, in *Re Bosworth & Gravesend Corporation*,<sup>2</sup> a piece of land *unlawfully set apart for the purpose of interment* and illegally used for that purpose in contravention of an Order in Council made under **section 1 of the Burial Act, 1853**,<sup>3</sup> was **held** by the Court of Appeal to be part of a "disused burial ground", and therefore subject to the prohibition against building.

In *Nicholl v. Llantwit Major Parish Council*,<sup>4</sup> however, a piece of ground, originally bought for burial purposes, but immediately found to be unsuitable owing to rock formations and therefore never "set apart for the purpose of interment", was held *not* to be a "disused burial ground", and accordingly the land could be sold for building purposes.

Moreover, in *Re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*,<sup>5</sup> it was **held** that the site of a disused church which had been pulled down could be built upon, because it was not a "disused

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<sup>1</sup> [1894] 1 Ch. 454.

<sup>2</sup> [1905] 2 K.B. 426.

<sup>3</sup> See footnote 4, p. 175, *supra*.

<sup>4</sup> [1924] 2 Ch. 214.

<sup>5</sup> [1895] 1 Ch. 702.



burial ground" within the 1884 Act, since it had never been "set apart for the purpose of interment" even though certain intramural burials had previously taken place in the church.

Again, in *St. Edmund, King & Martyr, London (Rector and Churchwardens) v. London County Council*,<sup>1</sup> extensions to a bank were allowed to be built on a portion of a closed churchyard, which had originally formed part of the site of a church destroyed at the time of the Great Fire, since the ground in question had never been set apart or used for burials.

### Meaning of "building".

For the purposes of the prohibition against the erection of buildings on disused burial grounds imposed by **section 3 of the Disused Burial Grounds Act, 1884**,<sup>2</sup> the expression "building" is defined by **section 4 of the Open Spaces Act, 1887**, to include any temporary or movable building.

Each of the following structures has been held to be a "building" and accordingly prohibited:—

- (i) a bandstand;

*(Attorney-General v. St. Pancras Vestry.)*<sup>3</sup>

- (ii) a urinal;

*(Bermondsey Borough Council v. Mortimer.)*<sup>4</sup>

- (iii) an underground chamber for an electricity transformer;

*(St. Nicholas Acons (Rector and Churchwardens) v. London County Council.)*<sup>5</sup>

and,

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<sup>1</sup> (1905), 69 J.P. 352.

<sup>2</sup> For the wording of this important provision, see p. 174, *supra*.

<sup>3</sup> (1893), 69 L.T. 627.

<sup>4</sup> [1926] P. 87.

<sup>5</sup> [1928] A.C. 469. This case was applied in *In re St. Mark's Church, Lincoln*, [1955] 3 W.L.R. 844, where the Consistory Court of Lincoln held that a small part of a proposed omnibus station roof which was to extend over, but was not to be supported by anything upon, a disused churchyard was nevertheless a "building upon a disused burial ground" and so prohibited by the 1884 Act.



(iv) a columbarium.

(*Re St. John's, Hampstead.*)<sup>1</sup>

The following erections, however, have each been **held not** to be a "building", and were accordingly permitted:—

(i) a wall separating a disused churchyard from a street and so built as to form an arcade or covered way for the protection of frescoes to be painted on the side of the wall within the churchyard;

(*St. Botolph, Aldersgate Without (Vicar) v. Parishioners.*)<sup>2</sup>

(ii) a screen to prevent the acquisition of a right to light;

(*Paddington Corporation v. Attorney-General.*)<sup>3</sup>  
and,

(iii) a toolshed required for the purpose of maintaining a closed churchyard as an open space under the **Open Spaces Act, 1906.**<sup>4</sup>

(*Bermondsey Borough Council v. Mortimer.*)<sup>5</sup>

#### APPLICATION OF THE DISUSED BURIAL GROUNDS ACT, 1884, IN LONDON.

The practical operation of the prohibition against the erection of secular buildings on disused burial grounds

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<sup>1</sup> [1939] P. 281.

<sup>2</sup> [1900] P. 69.

<sup>3</sup> [1906] A.C. 1.

<sup>4</sup> For the powers and duties of local authorities regarding the utilisation and maintenance of burial grounds under the Open Spaces Act, 1906, see pp. 179 to 183, *infra*.

<sup>5</sup> [1926] P. 87.

imposed by **section 3 of the Disused Burial Grounds Act, 1884**,<sup>1</sup> is materially affected, as regards London, by certain provisions of the **London County Council (General Powers) Act, 1935**. Under **section 42** of that Act, local authorities within the County of London are empowered to erect certain buildings on any "open space", which, by **section 41**, is defined so as to include a disused burial ground under the control and management of a local authority. In *Re St. Dunstan's, Stepney*,<sup>2</sup> it was accordingly **held** that in so far as the 1935 local Act authorised the erection of buildings on disused burial grounds the prohibition in **section 3** of the 1884 general Act was abrogated and ineffective.

## UTILISATION AND MAINTENANCE OF BURIAL GROUNDS UNDER THE OPEN SPACES ACT, 1906.

### Transfer of Disused Burial Grounds<sup>3</sup> to Local Authorities.<sup>4</sup>

**Section 6 of the Open Spaces Act, 1906**, provides:—

**The owner<sup>5</sup> of any disused burial ground may convey the burial ground to, or grant any term of years or other**

<sup>1</sup> For the wording of this important provision, see p. 174, *supra*.

<sup>2</sup> [1937] P. 199.

<sup>3</sup> By s. 20 of the Open Spaces Act, 1906, the expression "burial ground" includes "any churchyard, cemetery, or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment"; and the expression "disused burial ground" means "any burial ground which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or Order in Council". It will be observed that both definitions are practically identical to those applicable under the Disused Burial Grounds Act, 1884, *supra*, pp. 175 and 176.

<sup>4</sup> For the purposes of the Open Spaces Act, 1906, local authority means (i) the Council of any county, of any municipal or metropolitan borough, or of any district; (ii) the Common Council of the City of London; and (iii) any Parish Council invested with the powers of the Act by an Order of the County Council within which the parish is situated: Open Spaces Act, 1906, s. 1.

<sup>5</sup> Defined by s. 20 as "the person in whom the freehold of the burial ground is vested whether as appurtenant or incident to any benefice or cure of souls or otherwise".



limited interest therein to, or make any agreement with, any local authority for the purpose of giving the public access to the burial ground, and preserving the same as an open space accessible to the public and under the control of the local authority, and for the purpose of improving and laying out the same.

#### **Powers and Duties of Local Authorities with Respect to Burial Grounds Generally.**

By section 9 of the Open Spaces Act, 1906, local authorities are empowered to acquire burial grounds by agreement whether situated within their area or not, and to undertake the entire or partial care, management, and control of such grounds. As regards the maintenance of burial grounds by local authorities, section 10 provides:—

A local authority who have acquired any estate or interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired:—

- (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act<sup>1</sup> and under proper control and regulation and for no other purpose; and
- (b) maintain and keep the open space or burial ground in a good and decent state,

and may enclose it or keep it enclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.

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<sup>1</sup> For the definition of "open space", see footnote 1, p. 181, *infra*.



It is important to note that **section 10 (a)** above expressly requires the land to be held as an "open space"<sup>1</sup> and for no other purpose. In *Ex parte West Riding County Council*,<sup>2</sup> it was accordingly **held** that a portion of a closed churchyard acquired under the Act could *not* be used for road widening purposes.

Under **section 15 (1) of the Open Spaces Act, 1906**, any local authority who have acquired a burial ground under the Act may **make byelaws<sup>3</sup> for the regulation thereof, and of the days and times of admission thereto, and for the preservation of order and prevention of nuisances therein, and may by such byelaws impose penalties recoverable summarily for the infringement thereof, and provide for the removal of any person infringing any byelaw by any officer of the local authority or police constable.**

By **section 251 of the Local Government Act, 1933**, and **section 148 of the London Government Act, 1939**, the maximum penalty for each offence is **FIVE POUNDS [£5]**, *plus* such further fine, not exceeding **TWO POUNDS [£2]** per day, as may be imposed for each day an offence is allowed to continue after conviction.

#### **Special Provisions as to the Management of Consecrated Burial Grounds and the Playing of Games or Sports in any Burial Ground.**

**Section 11 of the Open Spaces Act, 1906**, provides, *inter alia*:—

**(1) A local authority shall not exercise any of the powers of management under this Act with reference**

<sup>1</sup> By s. 20 of the Open Spaces Act, 1906, the expression "open space" means "any land, whether enclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or is waste and unoccupied".

<sup>2</sup> (1935), 52 T.L.R. 111.

<sup>3</sup> For the appropriate procedure, *see* the Local Government Act, 1933, s. 250, and the London Government Act, 1939, s. 147. Under the Transfer of Functions (Secretary of State and Minister of Health) Order, 1946, S.R. & O. 1946, No. 1757, the confirming authority is now the Home Secretary.



to any consecrated burial ground unless and until they are authorised so to do by the licence or faculty of the bishop.

(2) The playing of any games or sports shall not be allowed in any burial ground in or over which a local authority have acquired any estate, interest, or control under this Act, except that:—

- (a) in the case of a consecrated burial ground, the bishop by licence or faculty; and
- (b) in the case of any burial ground which is not consecrated, the persons from whom the local authority have acquired the estate, interest, or control in or over the same,

may expressly sanction any such use of the burial ground, and may specify any conditions as to the extent or nature of such use.

#### **Special Provisions as to the Removal of Tombstones and Monuments.**

The detailed requirements and procedure regarding the removal of tombstones and monuments are contained in the subsections (3) to (5) of section 11 and read as follows:—

(3) In the case of any disused burial ground, at least three months before removing or changing the position of any tombstone or monument, a local authority shall—

- (a) prepare a statement sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary, and shall cause this statement to be deposited with the clerk of the local authority, and to be open to inspection by all persons; and
- (b) insert an advertisement of the intention to remove or change the position of such tombstones and



monuments three times at least in some newspaper circulating in the neighbourhood, and by that advertisement give notice of the deposit of the statement hereinbefore described, and of the place at which and the hours within which the same may be inspected; and

- (c) place a notice in terms similar to the advertisement on the door of the church (if any) to which the burial ground is attached, and deliver or send by post a notice to any person known or believed by the local authority to be a near relative of any person whose death is recorded on any such tombstone or monument.

(4) In the case of a consecrated ground, no tombstone or monument shall be removed or its position changed without a licence or faculty from the bishop, and no application for such licence or faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid :

Provided that on an application for a licence or faculty nothing shall prevent the bishop from directing or sanctioning the removal or change of position of any tombstone or monument, if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal or change of position to the notice of some person having a family interest in the tombstone or monument.

(5) A licence or faculty for the purposes of this section may be granted by the bishop of the diocese within which the consecrated burial ground is situate on the application of the local authority who have acquired any estate, interest, or control in or over the burial ground, and may be granted subject to such conditions and restrictions as to the bishop may seem fit.



**USE AND DEVELOPMENT OF BURIAL GROUNDS UNDER THE TOWN AND COUNTRY PLANNING ACTS, 1944 AND 1947, AND THE TOWN AND COUNTRY PLANNING (CHURCHES, PLACES OF RELIGIOUS WORSHIP AND BURIAL GROUNDS) REGULATIONS, 1950.<sup>1</sup>**

**Relevant Statutory Provisions.**

Very important powers regarding the use and development of consecrated land and burial grounds are now contained in **section 28 of the Town and Country Planning Act, 1944**, as amended by **section 113 of**, and set out in the Eleventh Schedule to, the **Town and Country Planning Act, 1947.**<sup>2</sup>

By **section 28 (4)**, any land consisting of a burial ground or part of a burial ground which has been acquired or appropriated for development purposes under **Part IV<sup>3</sup> of the Town and Country Planning Act, 1947**, or **section 19 (1) of the 1944 Act**, may be used<sup>4</sup> in any manner, whether or not involving the erection, construction or carrying out, or maintenance, of any building or work . . . notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise as respects burial grounds:

**Provided that this subsection shall not have effect as respects any such land which has been used for the burial of the dead until the prescribed requirements<sup>5</sup> with respect**

<sup>1</sup> S.I. 1950 No. 792.

<sup>2</sup> These powers are now extended to land acquired by Development Corporations under the New Towns Act, 1946, and to land acquired for the purposes of the Civil Aviation Act, 1949: New Towns Act, 1946, ss. 6 and 23 and the Fourth Schedule; Civil Aviation Act, 1949, s. 32.

<sup>3</sup> Ss. 37 to 46.

<sup>4</sup> In the case of land *not* acquired by a Minister, the use must conform with planning control: Town and Country Planning Act, 1944, s. 28 (4) (a). If a Minister acquired the land, the use may be for any purpose for which it was acquired: *ibid.*, s. 28 (4) (b).

<sup>5</sup> These requirements are now contained in the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations, 1950, S.I. 1950 No. 792, *infra*, pp. 185 to 189



to the removal and reinterment of human remains, and the disposal of monuments, tombstones or other memorials, in or upon the land have been complied with.

Subject to the provisions of the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations, 1950, it is expressly provided by section 28 (6)<sup>1</sup> that no ecclesiastical Faculty is required for the removal and reinterment of human remains, or for the removal and disposal of any tombstones, monuments or other memorials, and that no Licence from the Home Secretary is necessary under section 25 of the Burial Act, 1857.<sup>2</sup>

# **REQUIREMENTS OF THE TOWN AND COUNTRY PLANNING (CHURCHES, PLACES OF RELIGIOUS WORSHIP AND BURIAL GROUNDS) REGULATIONS, 1950, AS TO THE REMOVAL AND REINTERMENT OF HUMAN REMAINS AND THE DISPOSAL OF TOMBSTONES, MONUMENTS OR OTHER MEMORIALS.**

## **Duty of Authority in whom the Land is Vested to Publish and Serve Notice of Intention to Remove, Reinter and Dispose.**

Before removing any human remains, or disposing of any tombstone, monument or other memorial of a deceased person, *Regulation 7* requires the person in whom the land is vested:—

- (a) to *publish* in a local newspaper a *Notice of Intention* so to do at least once during each of two successive weeks with an interval between each publication of at least *six days*, and display a similar notice in a conspicuous place in the burial ground;

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<sup>1</sup> For the relevant wording of this provision, see p. 173, *supra*.

<sup>2</sup> For the wording of this section, see pp. 168 and 169, *supra*.



- (b) to *serve* a similar notice on the appropriate denominational authority<sup>1</sup>; and,
- (c) if the remains were interred in, or the memorial placed on, the land within *twenty-five years* prior to the date of the first publication of the Notice, to *serve* a similar notice on the personal representatives or next of kin (or, in the event of their being untraceable, any known relative) of the deceased.

**Contents of the Notice of Intention to Remove, Reinter and Dispose.**

By *Regulation 8*, the Notice of Intention must contain:—

- (a) the address at which particulars of the deceased persons and the tombstones, monuments and other memorials concerned may be inspected;
- (b) the name of the burial ground where it is proposed to reinter such remains and the manner in which it is proposed to dispose of such tombstones, monuments or other memorials;
- (c) a statement as to the right of the personal representatives or relatives to give *Notice in Writing* that they will themselves undertake the removal, reinterment, and disposal within *two months* of such Notice;
- (d) a statement of any directions<sup>2</sup> that have been given by the Home Secretary with respect to the removal and reinterment of human remains; and, in the case of consecrated land, of any

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<sup>1</sup> “Appropriate denominational authority” is defined by *Regulation 2 (1)* to mean, in the case of consecrated land, the Bishop of the diocese in which the land is situated, and in the case of any other land, such person or persons as shall be designated for the purpose by the controlling body of the religious denomination for whose purposes the land has been or is being used.

<sup>2</sup> By *Regulation 17*, the directions of the Home Secretary and the reasonable conditions imposed by the Bishop must be complied with as if they formed part of the Regulations.



requirements<sup>1</sup> imposed by the Bishop with respect to the manner of removal, the place and manner of reinterment, and the disposal of tombstones, monuments and other memorials; and

- (e) a statement of the extent to which the expenses of the removal, reinterment and disposal are to be paid by the person in whom the land is vested.

### **Power of Personal Representatives or Relatives to Effect the Removal, Reinterment and Disposal.**

*Regulation 9* empowers the personal representatives or relatives of any deceased person whose remains are interred in the land to give the appropriate *Notice in Writing* and, within *two months*, themselves to remove and reinter the remains, and dispose of any tombstone, monument or other memorial commemorating the deceased.

It is important to note that *Regulation 9* also provides that the cost of the removal and reinterment of remains from any one grave *must* be paid, up to the sum of *twenty-five pounds* [£25], by the person in whom the land is vested. As regards any tombstone, monument or memorial, the maximum compulsory payment by such person is *fifteen pounds* [£15].

### **Requirements where the Removal and Reinterment of Human Remains is not Carried Out by the Personal Representatives or Relatives.**

*Regulation 10* requires the human remains in such a case to be reinterred in such land as may be indicated as being reasonably available for the purpose by the appropriate denominational authority,<sup>2</sup> and failing any

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<sup>1</sup> See footnote 2, p. 186, *supra*.

<sup>2</sup> For the meaning of "appropriate denominational authority", see footnote<sup>1</sup>, p. 186.



such land being indicated, the reinterment is to be in any cemetery or burial ground with due regard to any portion set apart for a particular religious denomination.

Where reasonably practicable, *Regulation 11* provides for the removal and re-erection of tombstones, monuments, or memorials over the respective graves in the burial ground where the remains are reinterred or on some other appropriate site.

**Directions of the Medical Officer of Health regarding the Removal of all Human Remains.**

By *Regulation 12*, the removal of all human remains must be effected, and the remains reinterred, in accordance with the directions of the Medical Officer of Health for the district where the land is situated.

During removal, the ground must be screened from public view and a wooden shell provided where a coffin has perished.

**Position where a Tombstone, Monument or Memorial is neither Re-erected<sup>1</sup> nor Disposed of by the Personal Representatives or Relatives.<sup>2</sup>**

*Regulation 15* provides that, if the Minister so requires, particulars of the tombstone, monument or memorial must be submitted to the Royal Fine Art Commission for a report. A copy of the report is to be forwarded to the Minister, and the tombstone, monument or memorial must not be disposed of except in accordance with his directions.

Subject to the above provision, *Regulation 14* requires the tombstone, monument or memorial to be offered to the appropriate denominational authority<sup>3</sup> for disposal as that authority thinks fit, and if not accepted, to be broken and defaced before being disposed of otherwise.

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<sup>1</sup> Under *Regulation 11*, above.

<sup>2</sup> Under *Regulation 9*, p. 187, *supra*.

<sup>3</sup> See footnote 1, p. 186, *supra*.

### **Certification of the Removal and Reinterment of Human Remains.**

Upon any removal of remains, *Regulation* 13 requires a certificate to be sent to the Registrar General giving the dates of removal and reinterment respectively and identifying the place from which the remains were removed and the place in which they were reinterred, showing the particulars of each removal separately.

### **Notification of the Removal of Tombstones, Monuments or Other Memorials.**

Within *two months* of the removal of any tombstone, monument or memorial, *Regulation* 16 requires a record of the removal to be deposited with the council of the appropriate county borough or county district,<sup>1</sup> containing sufficient particulars to identify the memorial (including a copy of any inscription thereon) and showing the date and manner of its removal and disposal and the place (if any) to which it is transferred. A copy of the record must also be sent to the Registrar General.

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<sup>1</sup> In the case of land in the administrative county of London, the record must be deposited with the Common Council of the City of London or with the appropriate Metropolitan Borough Council.



CHAPTER I. OF THE DISCOVERY AND SETTLEMENT OF AMERICA.

THE first discovery of America was made by Christopher Columbus, who sailed from Spain in 1492, and discovered the continent of America in 1492. He was the first European to reach America, and his discovery opened the way for the settlement of the continent by Europeans.

CHAPTER II. OF THE DISCOVERY AND SETTLEMENT OF AMERICA.

THE second discovery of America was made by Christopher Columbus, who sailed from Spain in 1492, and discovered the continent of America in 1492. He was the first European to reach America, and his discovery opened the way for the settlement of the continent by Europeans.

CHAPTER III. OF THE DISCOVERY AND SETTLEMENT OF AMERICA.

THE third discovery of America was made by Christopher Columbus, who sailed from Spain in 1492, and discovered the continent of America in 1492. He was the first European to reach America, and his discovery opened the way for the settlement of the continent by Europeans.

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## Appendices.



Appendices

# APPENDIX I

## SELECTION OF REGISTERS, FORMS AND DOCUMENTS

PUBLISHED BY  
SHAW & SONS, LTD.,  
FOR THE USE OF  
BURIAL, CEMETERY AND CREMATION  
AUTHORITIES

### A. Registers, Forms and Documents Required by Burial and Cemetery Authorities.

Cat. No.	DESCRIPTION	Chapter and Page References, where appropriate.
<b>I.—REGISTERS RELATING TO GRAVES, EXCLUSIVE BURIAL RIGHTS AND MEMORIALS.</b>		
BUR 3	Register of Public Graves (Cemetery) (8 grave spaces per page) ... ..	Ch. 3; p. 58
BUR 3A	Register of Public Graves (Cemetery) (6 grave spaces per page) ... ..	Ch. 3; p. 58
BUR 12	Register of Public Graves in Consecrated Ground (8 grave spaces per page) ... ..	Ch. 2; p. 35
BUR 13	Register of Public Graves in Unconsecrated Ground (8 grave spaces per page) ... ..	Ch. 2; p. 35
BUR 4	Register of Purchased Graves (Cemetery) (8 grave spaces per page) ... ..	Ch. 3; p. 58
BUR 14	Register of Private Graves in Consecrated Ground (8 grave spaces per page) ... ..	Ch. 2; p. 35 Ch. 3; p. 58
BUR 15	Register of Private Graves in Unconsecrated Ground (8 grave spaces per page) ... ..	Ch. 2; p. 35 Ch. 3; p. 58



Cat. No.	DESCRIPTION.	Chapter and Page References, where appropriate.
BUR 35	Register of Grants of Exclusive Right of Burial ... ..	Ch. 2; p. 62
BUR 16	Register of Transfers of Private Graves ...	Ch. 2; p. 63
BUR 34	Register of Memorials ... ..	Ch. 2; p. 30
BUR 38	Register of Grave Maintenance, to show charge and amount received, 6 years on an opening	Ch. 6; p. 109

## II—REGISTERS RELATING TO BURIALS AND MORTUARIES.

BUR 6	Register of Burials, embodying the requirements of the Burial Acts (8 names per opening) ...	Ch. 6; p. 114
BUR 6A	Register of Burials of Still-born Children ...	Ch. 6; p. 114
BUR 11	Index to the Register of Burials ... ..	Ch. 6; p. 114
DC 52	Mortuary Register ... ..	Ch. 2; p. 39

## III.—FORM OF GRANT AND TRANSFER OF AN EXCLUSIVE RIGHT OF BURIAL.

	Grant of Exclusive Right of Burial, with duplicates to be retained by Burial Authority ...	Ch. 2; p. 30 Ch. 3; p. 58
	Grant of Exclusive Right of Burial, where the Powers and Duties of the Burial Board are transferred to a Parish Council or Joint Committee. ... ..	Ch. 2; p. 30 Ch. 3; p. 58
	<i>These Grants are only printed to order. Appropriate specimens for filling in local details will be sent on request. The Grants are generally printed on parchment paper, and can be impressed, if desired, with the Inland Revenue duty.</i>	
BUR 16A	Form of Transfer of Private Grave... ..	Ch. 2; p. 30 Ch. 3; p. 63

Cat. No.	DESCRIPTION.	Chapter and Page References, where appropriate.
<b>IV.—FORMS RELATING TO THE ERECTION OF MONUMENTS.</b>		
BUR 36	Application for permission to erect Monument	Ch. 2; p. 30 Ch. 3; p. 58 Ch. 6; p. 109
BUR 37	Permission to erect Monument with Notice to Cemetery Superintendent ... ..	Ch. 2; p. 30 Ch. 3; p. 58 Ch. 6; p. 109
<b>V.—NOTICES AND CERTIFICATES.</b>		
BUR 29	Notice to Burial Authority of Intended Interment ... ..	Ch. 6; p. 108
BUR 29A	Notice from Burial Authority to Gravedigger to Prepare Grave, etc. ... ..	—
INT 13	Notice to Clergymen to attend Funeral ...	Ch. 6; p. 105
INT 14	Notice to Sexton to prepare Grave ...	—
BUR-A	Notice of Burial without service prescribed by Law ... ..	Ch. 6; p. 105
BUR-B	Notice of Burial having taken place ...	Ch. 6; p. 115
BUR 8	Certificates of Burial ... ..	Ch. 6; p. 114
<b>VI.—MISCELLANEOUS.</b>		
PC 5A	Precept from Parish Council upon Rating Authority for Contribution towards Burial Expenses ... ..	Ch. 1; p. 18
LD	General Receipts by Burial Authority, not being Interment Fees ... ..	—
BUR 32A	Receipts of Fees Paid, with Carbon Duplicate to be retained by Burial Authority ...	Ch. 2; p. 32
BUR 22	Burial Fees Account Book ... ..	Ch. 6 p. 109
JB 5B	Cash Book, specially prepared and drawn up for the use of Joint Burial Committees in accordance with the Financial Statement ...	Ch. 1; p. 19
FS 4	Financial Statement for Joint Committee for purposes of Burial Acts ... ..	Ch. 1; p. 19
	Financial Statement bound in book for duplicate copies ... ..	Ch. 1; p. 19



### B. Forms, Documents and Registers required by Cremation Authorities.

Cat. No.	DESCRIPTION.	Chapter and Page References, where appropriate.
CB 1	Identity Card—"Cremated remains of....."	Ch. 8; p. 154
CB 2	Certificate of Cremation—Card ... ..	—
CB 3	Notice to Minister to officiate at Cremation Service ... ..	—
CB 4	Preliminary application for Cremation ...	Ch. 8; p. 145
CB 5	Application for Cremation (Form A) ...	Ch. 8; pp. 144-148
CB 6	Medical Certificates (Forms B and C) with Authority to Cremate (Form F) ... ..	Ch. 8; pp. 144, 148, 149
CB 7	Authority to Cremate (Form F) ... ..	Ch. 8; p. 150
CB 8	Certificate after Post-Mortem Examination (Form D) ... ..	Ch. 8; p. 149
CB 9	Authority to Scatter Remains ... ..	Ch. 8; p. 154
CB 10	Authority to forward Remains for Disposal ...	Ch. 8; p. 154
CB 11	Instructions to Chief Crematorium Attendant	Ch. 8; pp. 156-158
CB 12	Application for Cremation for Still-born Child	Ch. 8; p. 153
CB 13	Certificate of Medical Practitioner in respect of Cremation of Still-born Child, with Authority to Cremate ... ..	Ch. 8; p. 153
CB 14	Certificate of Cremation Service ... ..	—
CB 15	Envelope addressed to Medical Referee to fit inside CB 15A ... ..	Ch. 8; p. 152
CB 15A	Envelope addressed to Superintendent (and/or Registrar) ... ..	—
CB 16	Order for Cremation ... ..	—
CB 17	Certificate as to filing of documents... ..	Ch. 8; p. 155
CB 18	Cards for Floral Tributes ... ..	—

Cat. No.	DESCRIPTION.	Chapter and Page References, where appropriate
CB 19	<b>Compliments Slip</b> ... ..	—
CB 20	<b>Form of request</b> for those desirous of being cremated after death ... ..	Ch. 8; p. 143
CB 21	<b>Authority to collect casket or urn</b> ... ..	Ch. 8; p. 154
CB 22	<b>Certificate to Funeral Director</b> that Certificate for Disposal has been produced and filed...	Ch. 8; p. 155
	<hr/> <p><b>REGISTERS OF CREMATION AND SCAT- TERING OF ASHES and BOOKS OF REMEMBRANCE, etc., can be supplied to order.</b> ... ..</p> <hr/>	Ch. 8; p. 154



## APPENDIX II

### DIRECTORY\* OF BRITISH CREMATORIA

With Year of Opening, Office Addresses and Telephone Numbers as at  
January, 1st, 1956.

**ABERDEEN CREMATORIUM (1938)**

15 Bon-Accord Crescent, Aberdeen. (Tel.: 3740).

**BEDFORD CREMATORIUM (1955)**

The Borough Cemetery, Bedford. (Tel: 4073).

**BIRKENHEAD CREMATORIUM (1934)**

Landican Cemetery, Birkenhead. (Upton 516).

**BIRMINGHAM CREMATORIUM (1903)**

77 Harborne Road, Edgbaston, 15. (Edgbaston 3126 & 3688/9).

**BIRMINGHAM MUNICIPAL CREMATORIA**

Lodge Hill, (1937) Weoley Park Road, Selly Oak, Birmingham, 29  
(Tel.: Selly Oak 1575).

Yardley (1952), Yardley Road, South Yardley, Birmingham, 25  
(Tel.: Acocks Green 2888).

**BLACKPOOL CREMATORIUM (1935)**

Carleton Cemetery, Blackpool. (Tel.: Blackpool 25075).

**BOLTON CREMATORIUM (1954)**

Heaton, Bolton, Lancs. (Tel.: 692).

**BOURNEMOUTH CREMATORIUM (1938)**

North Cemetery, Bournemouth. (Tel.: Winton 30).

**BRADFORD CREMATORIUM (1905)**

Scholemoor Cemetery, Horton. (Tel.: 1127).

**BRIGHTON MUNICIPAL CREMATORIUM (1930)**

Lewes Road, Brighton, 7. (Tel.: 21020).

**BRIGHTON (The Downs) CREMATORIUM (1941)**

The Lodge, Hartington Road, Brighton 7. (Tel.: 21013).

**BRISTOL CREMATORIUM (1928)**

Bath Road, Bristol, 4. (Tel.: 76879).

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\* This Directory of eighty-two British Crematoria has been compiled from information in the Official Journal of the Cremation Movement and is reproduced by kind permission of The Cremation Society, 47 Nottingham Place, London, W.1.

**CAMBRIDGE CREMATORIUM (1938)**

Huntingdon Road, Cambridge. (Tel.: Madingley 251).

**CARDIFF CREMATORIUM (1953)**

Thornhill Road, Llanishen. (Llanishen 2023).

**CHELTENHAM CREMATORIUM (1938)**

Prior's Road, Cheltenham. (Tel.: 7245).

**CITY OF LONDON CREMATORIUM (1905)**

Manor Park, London, E.12. (Tel.: Wanstead 8441-2).

**COVENTRY CREMATORIUM (1943)**

9 Hay Lane, Coventry. (Tel.: 5555).

**CROYDON CREMATORIUM (1937)**

Mitcham Road, Croydon. (Tel.: Thornton Heath 3877).

**DALDOWIE CREMATORIUM (1955)**

Broomhouse, Uddingston, Lanarkshire. (Tel.: Baillieston 1004).

**DARLINGTON CREMATORIUM (1901)**

5 Skinnergate, Darlington. (Tel.: 3461).

**DUKINFIELD CREMATORIUM (1953)**

Cemeteries Office, Dukinfield. (Tel.: Ashton 1901).

**DUNDEE CREMATORIUM (1936)**

41 Reform Street, Dundee. (Tel.: 3781).

**EAST LONDON CREMATORIUM (1954)**

Grange Road, Plaistow, E.13. (Tel.: Grangewood 2443).

**ECCLES CREMATORIUM (1955)**

Peel Green Cemetery, Eccles. (Tel.: 3745).

**EDINBURGH CREMATORIUM (1929)**

3 Walker Street, Edinburgh, 3. (Tel.: 24115-6).

**ENFIELD CREMATOIRUM (1938)**

Church Lane, Tottenham, N.17. (Tel.: Tottenham 4944/5).

**GLASGOW CREMATORIUM (1895)**

142 St. Vincent Street, Glasgow. (Tel.: Central 8563).

**GLOUCESTER CREMATORIUM (1953)**

Coney Hill Cemetery, Gloucester. (Tel.: 23902).

**GOLDERS GREEN CREMATORIUM (1902)**

Hoop Lane, N.W.11. (Tel.: Speedwell 2375/6).

**GRIMSBY CREMATORIUM (1954)**

Scartho Road Cemetery. (Tel.: 7581).

**GUERNSEY CREMATORIUM (1929)**

States Office, Guernsey. (Tel.: 1340).

**HARROGATE CREMATORIUM (1936)**

Stonefall Cemetery, Harrogate. (Tel.: 83523).

**HASTINGS CREMATORIUM (1955)**

Borough Cemetery, The Ridge, Hastings. (Tel.: 4940).



- HENDON PARK CREMATORIUM** (1922)  
Abney Park Cemetery Co. Ltd., London, N.16.  
(Tel.: Stamford Hill 2678).
- HONOR OAK CREMATORIUM** (1939)  
Brenchley Gardens, S.E.23. (Tel.: New Cross 3121).
- HULL CREMATORIUM** (1901)  
Hedon Road Cemetery, Hull. (Tel.: 33530).
- IPSWICH CREMATORIUM** (1928)  
Cemetery Gates, Ipswich. (Tel.: 2931).
- ISLINGTON CREMATORIUM** (1937)  
Town Hall, London, N.1. (Tel.: Canonbury 3388).
- KENT COUNTY (Charing) CREMATORIUM** (1936)  
7 Ashford Road, Maidstone. (Tel.: Maidstone 2930).
- KETTERING CREMATORIUM** (1940)  
Rothwell Road, Kettering. (Tel.: 3503).
- KINGSTON-UPON-THAMES CREMATORIUM** (1952)  
Bonner Hill Road, Kingston. (Tel.: Kingston 2121).
- LEEDS CREMATORIUM** (1905)  
Lawns Wood Cemetery, Adel, Leeds. (Tel.: Leeds 73188).
- LEEDS (Cottingley Hall) CREMATORIUM** (1938)  
Elland Road, Leeds 11. (Tel.: 761011).
- LEICESTER CREMATORIUM** (1902)  
Gilroes Cemetery, Leicester. (Tel.: Anstey 2292).
- LEITH CREMATORIUM** (1939)  
90 Constitution Street, Leith. (Tel.: 37114).
- LIVERPOOL CREMATORIUM** (1896)  
Priory Road, Anfield. (Tel.: Anfield 267).
- MANCHESTER CREMATORIUM** (1892)  
2 Cooper Street, Manchester, 2. (Tel.: Central 4596).
- MANOR PARK CREMATORIUM** (1955).  
Manor Park Cemetery, London, E.12. (Tel. Maryland 1486).
- MIDDLETON (Lancs.) CREMATORIUM** (1952)  
Boarshaw Cemetery, Boarshaw Road, Middleton.  
(Tel.: Middleton 2776).
- MORTLAKE CREMATORIUM** (1939)  
Clifford Avenue, Mortlake, S.W.14. (Tel.: Prospect 4358).
- NEWCASTLE-ON-TYNE CREMATORIUM** (1934)  
Benwell Cemetery, Newcastle. (Tel.: 28520).
- NORTHAMPTON CREMATORIUM** (1939)  
18 Market Square, Northampton. (Tel.: 5912).
- NORWICH CREMATORIUM** (1937)  
4 Eastbourne Place, Prince of Wales Road, Norwich. (Tel.: 21267).

- NOTTINGHAM CREMATORIUM** (1931),  
Southern Cemetery, Wilford Hill, Nottingham.  
(Tel.: Ruddington 464/5).
- OLDHAM CREMATORIUM** (1953)  
Hollinwood Cemetery. (Tel.: Failsworth 1312).
- OXFORD CREMATORIUM** (1939)  
55 Cornmarket Street, Oxford. (Tel.: 4165).
- PAISLEY CREMATORIUM** (1938)  
4 St. Mirren Street, Paisley. (Tel.: 2334).
- PLYMOUTH CREMATORIUM** (1934)  
Efford Cemetery, Plymouth. (Tel.: 71353).
- PONTYPRIDD CREMATORIUM** (1924)  
Glyntaff Treforest, Nr. Pontypridd, Glam.  
(Tel.: Pontypridd 2810/2794).
- READING CREMATORIUM** (1932)  
Henley Road, Reading. (Tel.: 72433).
- ROCHDALE CREMATORIUM** (1938)  
Bury Road, Rochdale. (Tel.: 2919).
- ST. MARYLEBONE CREMATORIUM** (1937)  
Town Hall, St. Marylebone, W.1. (Tel.: Welbeck 7766).
- SHEFFIELD CREMATORIUM** (1905)  
City Road Cemetery, Sheffield. (Tel.: 37168).
- SHIPLEY CREMATORIUM** (1955)  
Nab Wood Cemetery, Shipley. (Tel.: 54109).
- SKIPTON CREMATORIUM** (1952)  
Waltonwrays Cemetery, Carleton Road, Skipton, Yorks.  
(Tel.: Skipton 3272/3).
- SOUTHAMPTON CREMATORIUM** (1932)  
Southampton Cemetery Office. (Tel.: Southampton 24238).
- SOUTHEND-ON-SEA CREMATORIUM** (1953)  
27 Victoria Avenue, Southend. (Tel.: 49451 Ext. 277/9).
- SOUTH LONDON CREMATORIUM** (1936)  
Streatham Park, Rowan Road, S.W.16. (Tel.: Pollards 2255).
- SOUTH WEST MIDDLESEX CREMATORIUM** (1954)  
Hounslow Road, Hanworth. (Tel.: Feltham 3099).
- STOCKPORT CREMATORIUM** (1934)  
Buxton Road, Stockport. (Tel.: 5221/2).
- STOKE-ON-TRENT CREMATORIUM** (1940)  
Cemetery Road, Skelton. (Tel.: S.on T. 2435).



**SUNDERLAND CREMATORIUM (1951)**

Bishopwearmouth Cemetery. (Tel.: 56201).

**WALSALL CREMATORIUM (1955)**

Ryecroft Cemetery. (Tel.: 4016).

**WANDSWORTH CREMATORIUM (1938)**

Municipal Buildings, S.W.18. (Tel.: Battersea 6464).

**WEST HARTLEPOOL CREMATORIUM (1954)**

Stranton Grange Cemetery. (Tel.: 2586).

**WEST LONDON CREMATORIUM (1939)**

Harrow Road, London, W.10. (Tel.: Ladbroke 0152).

**WEST NORWOOD CREMATORIUM (1915)**

West Norwood S.E.27. (Tel.: Gipsy Hill 0011).

**WEYMOUTH CREMATORIUM (1939)**

Town Hall, Weymouth. (Tel.: 521)

**WIGAN CREMATORIUM (1955)**

Wigan Cemetery, Lower Ince. (Tel.: 3748).

**WOKING CREMATORIUM (1835)**

St. John's, Woking, Surrey. (Tel.: Brookwood 2197).

**WOLVERHAMPTON CREMATORIUM (1954)**

Bushbury Cemetery. (Tel.: 21047).

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FROM 1776 TO 1789

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THE THIRD PART OF THE HISTORY OF THE

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