

## BOOK REVIEWS

### *CANON LAW AND THE LAW OF ENGLAND*

R.H. HELMHOLZ

Hambleton Press, 1987. xvi+364 pp.

This volume contains eighteen papers published in various journals by Dr Helmholz between 1969 and 1983. They deal with various aspects of the Canon Law and its practice in England with special reference to its influence on English Law from the thirteenth century to the seventeenth. Much of what Dr Helmholz writes here is based on a detailed examination of manuscript records of proceedings in the English Ecclesiastical Courts and anyone who has attempted this will be aware how many hours of tiring and often tedious work lies behind these finished papers. Readers must be grateful to Dr Helmholz not only for his scholarship and presentation but also for the physical and mental labour involved.

As in his book on Marriage Litigation in Medieval England Dr Helmholz shows here also how important it is to look behind doctrinal statements and the textbooks of Canon Law to what actually happened in its administration. Such an examination reinforces the view which he has expressed elsewhere that F.W. Maitland overstated his case against Bishop Stubbs in the famous controversy about the Canon Law in England and that the extent to which the general law was modified locally needs more recognition than it has received.

Some of the papers are technical, such as the discussions of *Legitim* in English Legal History and *Assumpsit* and *Fidei Laesio*, but there are several which are of more general interest. The first paper is a discussion of the relationship between the Canon Law and English Common Law, particularly in the post-Reformation period, arriving at the conclusion that there was movement back and forth to the enrichment of both. The next two deal with standards of impartiality for papal judges delegate and ethical standards for advocates and proctors. Others deal with excommunication as a legal sanction, crime and compurgation, infanticide, bastardy litigation, bankruptcy and probate jurisdiction, and usury. As the medieval Canon Law touched on so many different aspects of life so do these papers.

For anyone who has some acquaintance with legal language and concepts and wishes to become more acquainted with the ecclesiastical background to our present law, I cannot think of any collection of essays which would answer his purpose so well. Dr Helmholz is a careful, learned and reliable guide, his learning modestly worn and his work written with charm.

ERIC CICESTR

### *THE CHURCHYARDS HANDBOOK*

Third Edition 1988 by P. BURMAN and H. STAPLETON

Church Information Office £7.95

This third edition of the Churchyards Handbook will be a great help to Archdeacons and those concerned with enabling the rules and regulations to be kept and in a position to give advice to parish clergy. I am less sure of its value to the parish clergyman faced with a pastoral dilemma.

The language of the handbook is clear and precise. There is much good advice tucked away in the odd phrase or passing comment which could be very helpful. The opening chapter on the importance of churchyards draws attention to their pastoral, ecological, cultural and historical significance. The authors point out the very important fact that now sixty per cent of funerals culminate in cremation rather than burial. It is just this very fact about which the handbook is least helpful later on. The next chapter on the history of the churchyard and the chapter on archaeology set the tone of much of the book which has a strong emphasis on the need for preservation. The days of tidy lawn churchyards with the minimum of tombstones are over. The essential character of churchyards requires memorials, but ones which are sympathetic to the surroundings and the architecture of the church. The final chapter in the first section on churchyard monuments begins to lay the foundations for the practical advice which is to follow. There is here a reminder that monuments need not always be tombstones but might include sundials, lych gates and other items.

Part II tackles the legal questions and gives a very clear outline of the Faculty Jurisdiction and the delegated authority normally granted by Chancellors to parish priests in this matter. This is still not clearly understood by a large number of clergymen. They could get themselves out of some difficult pastoral problems if they used the delegated authority more carefully or on some occasions refused to use it and referred matters to the Chancellor. The role of Local Authorities and procedure for closing churchyards are clearly set out. This is a very helpful section of the book.

Part III deals with practical considerations about commissioning new memorials, the sort of stones and inscriptions to encourage, the management of flora and fauna, trees and the need to keep proper records which may well become mandatory as a result of the Faculty Jurisdiction Commission report.

The situation over trees in churchyards is clearly odd. The need for reference to the Parsonages Board makes sense to very few and I would doubt if it is often observed. It would be far better if all churchyard matters were dealt with by the DAC and the Archdeacons in relation to the Chancellor. Few clergymen understand or even wish to know about 'rights of herbage' and these rights could well be abolished. I once had to advise a Bishop that the lady who complained to him that the Vicar's sheep were eating the flowers off her husband's grave had no grounds for complaint because the Vicar was exercising his 'rights of herbage' through his sheep.

Chapter 13 deals with the matter of disposal after cremation and this is the least satisfactory chapter of the book. While recognising that cremation is now the normal practice the chapter admits that no satisfactory solution has yet been found in relation to memorials. The recommendation of a columbarium in churches is unlikely to gain wide acceptance. I am not convinced about the suggestion that ashes should be poured into a hole and not even contained in a

wooden casket. Burial of ashes in wooden caskets is normal practice in many places and seems to meet the needs of the bereaved. The marking of the place of the burial of ashes is a major issue. In many areas of the country where flowers are placed on graves at special times of the year there is clearly a need felt by the bereaved to place flowers where cremated remains are buried even though it leads to a mess of jam jars and the like. Should there be small stones? There will be whether incumbents, chancellors or the authors of the book like it or not. Should there be holders for flowers? There will be again whatever people's views. There are hints that more imaginative schemes might be found – small areas or places with ground cover which might contain stones, not of traditional shape, in which names were engraved, could be encouraged much more than they are.

The book contains pictures of many interesting new stones, inscriptions and odd carving but we all know that these are the exception rather than the rule.

The appendix to the report suggests rules for churchyards, procedures for care of churchyards and other suggested draft forms and agreements which are all very helpful. Particularly important is the requirement of a six month delay after a burial before an application for a memorial. This space allows for the settling both of the grave and of natural grief. The advice to establish proper funds for the upkeep of churchyards is needed as it is something which many PCCs fail to do.

I missed any commendation of the practice of 'Best Kept Churchyard' competitions which have been a valuable feature in many dioceses in improving the state of churchyards. Those judging in such competitions should most certainly have this handbook at their side.

In all the pressure to set good standards, to raise people's sights and to preserve churchyards there is a singular lack of pastoral sensitivity in this volume. The Vicar faced with a bereaved husband demanding a marble slab over the length of his wife's grave is not given much help to deal with the situation. The genuinely bereaved family who are denied a place to put flowers on a loved one's mortal remains do not really seem to be in mind. Nor is there any advice for the incumbent coping with highly commercial masons who send round sympathetic people to obtain orders for memorial stones a week after a funeral. The standards suggested in the report bear little relation to the actual situation faced by incumbents with churchyards (or rural incumbents responsible for several churchyards). The administrative pressures mixed with the pastoral needs and the commercial interests are where most clergy need help. No doubt the Archdeacons will find themselves doling it out. In its proper desire to set very good standards the handbook has removed itself too far from the realities which many incumbents face and the genuine needs of the bereaved. If however clergy could use delegated authority a bit more carefully they would find it a real pastoral help. As in so many matters the Archdeacons will have to be the interpreters and enablers to promote good practice and pastoral care.

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