

1964 No. 5

A MEASURE passed by the National Assembly of the Church of England to enable ecclesiastical courts to vest privately owned parts of churches in the persons in whom the churches are vested; to amend the law relating to the issue of faculties out of such courts concerning the demolition of churches and works affecting monuments in private ownership; to empower bishops to make certain licensed chapels subject to the faculty jurisdiction of such courts; to declare the law relating to the jurisdiction of such courts over the curtilage of churches; to limit the duration of rights of sepulture; to make better provision for the enforcement of orders as to costs and expenses; to repeal and re-enact the Faculty Jurisdiction Measure 1938, with amendments; and for other purposes connected therewith.

[15th April 1964]

JURISDICTION IN FACULTY CASES

1.—(1) In this section “building” means any building or structure forming part of and physically connected with a church and “incumbent” means the incumbent of the benefice comprising the parish in which the church is situated.

(2) A court may in proceedings taken by an incumbent or parochial church council grant a faculty vesting any building in the person or body in whom the church is vested where the incumbent or parochial church council satisfies the court that:—

- (i) the person in whom the church is vested is not the owner entitled to possession of the building or that there is reasonable doubt as to the ownership or right to possession thereof; and
- (ii) the incumbent or parochial church council or some other person has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with all persons who may reasonably be supposed to have any rights of ownership or possession, whether absolute or limited, over the building; and
- (iii) notwithstanding such reasonable steps there has been no communication with such person or persons or that all persons with whom communication has been made and who, on reasonable grounds, claim rights of ownership or possession over the building consent to the grant of a faculty under this section; and

Vesting of privately owned parts of churches in the persons in whom the churches are vested.

- (iv) no works of repair, redecoration or reconstruction have been executed upon the building by or on behalf of any person claiming any title thereto adverse to the title of the person in whom the church is vested during the seven years immediately preceding the commencement of the proceedings.

(3) In any proceedings for obtaining a faculty under this section the court may appoint a person being a solicitor to represent all persons other than those represented, known or unknown, who may have rights of ownership or possession over the building in question, and all proper costs of such solicitor in the proceedings shall be paid by the persons bringing the proceedings, unless otherwise ordered by the court.

(4) Where a faculty under this section is granted the building specified therein shall, by virtue of such faculty and without any further or other assurance or conveyance, vest in the person in whom the church is vested as part of the church for all purposes and any rights of property of any other person therein shall thereupon determine.

Faculties for
demolition
of churches.

2.—(1) The court shall not grant a faculty for the demolition or partial demolition of a church except on the grounds specified in this section and shall not grant a faculty under sub-section (2) of this section nor under paragraph (i) of subsection (3) of this section unless:—

- (i) the person bringing proceedings for the faculty has, within the prescribed time, caused to be published in the "London Gazette" and in such other newspapers as the court may direct a notice stating the substance of the petition for the faculty; and
- (ii) an officer of the court has given notice in writing to the Council and the advisory committee of the diocese in which the church is situated of the petition; and
- (iii) the judge of the court has thereafter considered such advice as the advisory committee has tendered to the court; and
- (iv) the judge has heard evidence in open court, after application for the purpose has been made to the court in the prescribed manner, from:—
 - (a) a member of the Council or some person duly authorised by the Council; and
 - (b) any other person, unless in the opinion of the judge his application or the evidence which he gives is frivolous or vexatious.

(2) The court may grant a faculty for the demolition of the whole or part of a church if the court is satisfied that another church will be erected on the site or curtilage of the church in question or part thereof to take the place of that church.

(3) A court may grant a faculty for the demolition or part of a church if it is satisfied that:—

- (i) the part of the church left standing will be used for the public worship of the Church of England for a substantial period after such demolition; or
- (ii) such demolition is necessary for the purpose of the repair, alteration or reconstruction of the part to be demolished or of the whole of the church.

Provided that a court shall not grant a faculty under paragraph (ii) of this sub-section unless an officer of the court has given notice in writing to the Council of the petition and the judge has considered any advice which the Council may tender to the court.

(4) A court may grant a faculty for the demolition or partial demolition of any church if, in respect of that church the following order has been made by a court of competent jurisdiction or any of the following notices has been served by the appropriate local authority:—

- (i) an order under section fifty-eight of the Public Health Act 1936, requiring execution of such work as may be necessary to obviate danger from the condition of that church;
- (ii) a notice requiring the taking down, repair or securing of that church given under sub-section (2) of section sixty-two of the London Building Acts (Amendment) Act 1939, or under the provisions of any other local Act empowering the council of a county, city, borough or district to give such a notice on the grounds that a building or structure is dangerous;
- (iii) a notice that the local authority propose to take immediate action to deal with the church as a dangerous building under section twenty-five of the Public Health Act 1961;
- (iv) a notice requiring the execution of works of repair or restoration to the church under section twenty-seven of the Public Health Act 1961.

(5) Nothing in this section shall be construed as prejudicing or affecting the provisions of the Ancient Monuments Acts 1913 to 1953, or the Town and Country Planning Acts 1947 to 1959.

3.—(1) This section shall apply to faculties for the moving, demolition, alteration or execution of other work to any monument erected, whether before or after the passing of this Measure, in or upon any church or other consecrated building or the curtilage thereof or upon consecrated ground other than

Faculties affecting monuments owned by persons withholding consent thereto.

consecrated burial grounds to which section eleven of the Open Spaces Act 1906, applies or has been applied.

(2) Subject to the provisions of the succeeding sub-section a court may grant a faculty to which this section applies:—

- (i) although the owner of the monument withholds his consent thereto or cannot be found after reasonable efforts to find him have been made; and
- (ii) in respect of a monument erected under a faculty or affecting which any faculty has been granted, whatever the date of such faculty.

(3) No faculty to which this section applies shall be granted if the owner of the monument in question withholds his consent thereto but satisfies the court that he is, within a reasonable time, willing and able to remove the monument (or so much thereof as may be proved to be his property) and to execute such works as the court may require to repair any damage to the fabric of any building or to any land caused by such removal. The court may, upon a petition for a faculty to which this section applies, grant a faculty authorising such removal and for all purposes connected therewith and may make such orders as may be just as to the execution and cost of all necessary works.

(4) For the purposes of this section “monument” includes a tomb, gravestone or other memorial and any kerb or setting forming part thereof, and “owner” means the person who erected the monument in question and, after his death, the heir or heirs at law of the person or persons in whose memory the monument was erected and “property” shall be construed accordingly.

Sale of books in parochial libraries under a faculty.

4.—(1) Notwithstanding anything to the contrary contained in section ten of the Parochial Libraries Act 1708, any book in a parochial library appropriated to the use of the minister of any parish or place within the operation of that Act may be sold under the authority of a faculty, and in the case of every sale so authorised the proceeds of sale shall be applied for such of the ecclesiastical purposes of the parish as in such faculty may be directed. Before granting such a faculty the judge shall require the advisory committee to advise him thereon and shall consider such advice as the committee may tender to the court.

(2) Any question whether a library is within the said Act and is so appropriated shall be finally determined by the Charity Commissioners.

Payment of costs by party responsible for breach of law.

5.—(1) If in any proceeding for a faculty, whether opposed or not, it appears to the court that any person being a party to the proceeding was responsible wholly or in part for the introduction into or removal from a church, churchyard or other

consecrated ground of any articles without the necessary faculty, or for the execution of any work in a church, church-yard or other consecrated ground without the necessary faculty, the court may order the whole or any part of the costs and expenses of the proceeding or consequent thereon, including the cost of any works ordered by the court (so far as such costs, cost of works, and expenses have been occasioned by such introduction, removal or unlawful execution as the case may be), to be paid by such person.

(2) In any such proceeding the court may by way of special citation add as a further party to the proceeding any person alleged to be so responsible or partly responsible and not already a party and notwithstanding that such person resides out of the diocese.

6.—(1) Where the bishop has licensed a building for public worship and he considers that circumstances have arisen which make it desirable that such building should be subject to the faculty jurisdiction he may by order direct that such building shall be subject to the jurisdiction of the court of the diocese during such period as may be specified in the order. Licensed chapels may be made subject to faculty jurisdiction.

(2) Any building in respect of which an order is made under this section shall, during the period specified in the order, be subject, together with its furnishings and contents, to the jurisdiction of the court specified in the order as though it were a consecrated church; but an order shall not render unlawful any act done before the making of the order nor shall require the issue of faculties confirming such acts.

(3) The bishop shall send every order made under this section to the registrar of the diocese and the registrar shall register any order so made in the diocesan registry. There shall be payable to the diocesan registrar for registering such order, for permitting searches for and giving inspection and furnishing copies of any such order such fees as may from time to time be authorised by an order made under the Ecclesiastical Fees Measure 1962.

(4) An order made under this section shall be revocable by the bishop at any time.

7.—(1) For the avoidance of doubt it is hereby declared that where unconsecrated land forms, or is part of, the curtilage of a church within the jurisdiction of a court that court has the same jurisdiction over such land as over the church. Curtilages of churches.

(2) This section shall not render unlawful any act done or proceedings taken in good faith before the passing of this Measure nor shall require the issue of faculties confirming such acts.

Rights of sepulture

Exclusive rights to burial spaces.

8.—(1) Any right to the exclusive use of any particular part of a churchyard, burial ground or other consecrated land for the purposes of sepulture, whether absolute or limited and however granted or acquired, shall cease one hundred years after the passing of this Measure, unless granted, enlarged or continued by a faculty issued after the passing of this Measure:

Provided that the court shall not issue a faculty granting enlarging or continuing any such right for any period longer than one hundred years from the date of the faculty.

(2) This section shall not apply to burial grounds and cemeteries provided under the Burial Acts 1852 to 1906, or the Public Health (Interments) Act 1879.

Parties and procedure in faculty cases

Archdeacon and non-resident electors to be deemed to have an interest in faculty proceedings.

9.—(1) For the purposes of any proceeding for obtaining a faculty the archdeacon of the archdeaconry in which the parish concerned is situate shall be deemed to have an interest as such, and any person whose name is entered on the electoral roll of the parish concerned but who does not reside therein shall be deemed to have an interest as though he were a parishioner of that parish.

(2) If the archdeaconry be vacant or the archdeacon be incapacitated by absence or illness from exercising or fulfilling the rights or duties conferred or imposed upon him by this Measure or is in the opinion of the bishop for any other reason unable or unwilling to act, such other person as the bishop shall appoint in that behalf in writing shall have power to act in the place of the archdeacon for the purposes of this Measure in any particular case.

(3) If the archdeacon or such other person as may be appointed under this section intervenes in any such proceeding all costs properly incurred by him or which he shall be ordered by the court to pay shall be paid by the board of finance of the diocese in which the parish concerned is situate:

Provided that a board shall not be liable for any sum by virtue of this section unless such intervention is approved by the board in writing and, if such approval is duly given, any order in such proceeding that the costs of the archdeacon or other appointed person be paid by any other party may be enforced by the board in the name of the archdeacon or other appointed person.

Functions of archdeacons in faculty cases.

10. In any proceeding for obtaining a faculty the court may:—

(a) decree the issue of a faculty, subject to a condition requiring the work authorised thereby or any part

thereof to be carried out under the supervision of the archdeacon or of any other person nominated by the court in that behalf ; and

- (b) direct that, in default of the incumbent and churchwardens carrying out the work so authorised or any part thereof, a faculty shall issue to the archdeacon authorising him to carry out the same ; and
- (c) order that the costs and expenses of the archdeacon be paid by any other party to the proceeding.

11. Any sum payable by virtue of an order of the court in or consequent upon any proceeding for a faculty shall, if the county court so orders, be recoverable by execution issued from the county court or otherwise as if payable under an order of that court.

Mode of enforcing orders as to costs and expenses.

ARCHDEACON'S CERTIFICATE PROCEDURE

12.—(1) Every application received by the registrar of a diocese from the incumbent and churchwardens of a parish, supported by a resolution of the parochial church council, for authority to carry out:—

Archdeacons to issue certificates in certain cases.

- (a) repairs to a church not involving substantial change in the structure of the building nor affecting its appearance either externally or internally ; or
- (b) repairs to the contents of a church not materially affecting their nature or appearance ; or
- (c) redecoration of a church or its contents ; or
- (d) any alteration in an existing heating system not involving a substantial change in the appearance of the church either externally or internally ;

shall, subject to the provisions of this section, be referred by the registrar to the archdeacon of the archdeaconry in which the church is situate.

(2) The registrar shall not refer any such application to the archdeacon unless:—

- (i) he is satisfied that it is an application within the preceding subsection ; and
- (ii) the application is supported by a certificate from the incumbent and churchwardens that notice of intention to make such an application has been given in the prescribed manner in the parish and that opportunity to object to the proposed works has been duly given to all having interest :

Provided that if the registrar is not satisfied that an application is within the preceding subsection he shall so inform the archdeacon and shall refer the application to the judge in the prescribed manner for directions thereon.

(3) If notice of objection to the proposed works is given to the registrar in the prescribed manner he shall not refer the application to the archdeacon but shall require the incumbent and churchwardens to apply to the court for a faculty in respect of the proposed works.

(4) The archdeacon shall consider any application referred to him under this section and shall:—

(a) with the approval of the advisory committee, issue a certificate authorising the execution of the work proposed ; or

(b) direct that application should be made to the court for a faculty with regard thereto.

(5) A certificate issued by an archdeacon in pursuance of this section shall be a sufficient authority for the execution of the proposed work without a faculty.

(6) A copy of any certificate issued by an archdeacon under this section shall be transmitted by him to the registrar of the diocese and filed in the diocesan registry.

(7) The procedure laid down by this section may be followed at the discretion of the judge with regard to any other application which in his opinion is unlikely to give rise to any controversy or dissatisfaction in the parish concerned and is not of sufficient importance to justify the expense of proceedings for a faculty.

ADVISORY COMMITTEES

Diocesan
advisory
committees.

13.—(1) In every diocese there shall be an advisory committee for the care of churches, to be known as “ the Diocesan Advisory Committee ”, consisting of the archdeacons of all the archdeaconries within the diocese and such other persons as the bishop may by writing appoint, whose term of office shall be five years. Members shall be eligible for re-appointment. The bishop may appoint one of the members of the advisory committee to be chairman.

(2) The advisory committee shall advise the archdeacon before the issue of a certificate under the preceding section and, if required to do so, shall advise:—

(a) the judge ;

(b) intending applicants for faculties ;

(c) persons building new churches or converting buildings for the purpose of churches or erecting buildings or converting existing buildings with the intention that they shall be licensed for public worship ; and

(d) persons owning or responsible for the upkeep of unconsecrated buildings licensed for public worship.

MISCELLANEOUS

14.—(1) A Rule Committee, constituted in manner laid down **Rules.** by the Schedule hereto, may make rules:—

- (a) for regulating the practice of all courts in relation to applications for faculties and so that the power to make such rules shall extend to all matters of procedure and practice within the cognisance of the faculty jurisdiction of all courts ;
- (b) for regulating the manner in which the plans and specifications of any work for which a faculty is required shall be submitted to the advisory committee and the manner in which the report thereon of the advisory committee shall be submitted to the court ;
- (c) for regulating the procedure and practice where application is made for an archdeacon's certificate under section twelve of this Measure ; and
- (d) otherwise for carrying this Measure into effect.

(2) Upon the coming into operation of rules made under the preceding sub-section all rules of procedure in relation to applications for faculties of any court which are inconsistent therewith shall cease to have effect and no practice which is inconsistent with those rules shall thereafter prevail in any court.

(3) Every rule made in pursuance of this section shall be laid before the Church Assembly and shall not come into operation unless it has been approved by the Church Assembly.

(4) The Statutory Instruments Act 1946, shall apply to any rule approved by the Church Assembly under the last foregoing sub-section as if it were a statutory instrument and were made when so approved, and as if this Measure were an Act providing that any such rule should be subject to annulment in pursuance of a resolution of either House of Parliament.

15. In this Measure unless the context otherwise requires : — Interpretation.

“ advisory committee ” means the advisory committee for the care of churches of a diocese appointed under section thirteen of this Measure ;

“ bishop ” means the bishop of the diocese concerned ;

“ council ” means the Central Council of Diocesan Advisory Committees for the Care of Churches, as constituted in accordance with the resolution of the Church Assembly passed on the 18th June, 1958, or any body subsequently constituted to exercise the functions of the Council as so constituted ;

“ court ” means the ecclesiastical court of any province or diocese ;

“ judge ” means the judge of any such court ;

“ prescribed ” means prescribed by rules made under section fourteen of this Measure.

Repeal.

16. The Faculty Jurisdiction Measure 1938, is hereby repealed, but any rule made under the said Measure shall remain in force until replaced or otherwise revoked by rules made under this Measure.

Extent and Short Title.

17.—(1) This Measure shall extend to the whole of the provinces of Canterbury and York, except the Channel Islands and the Isle of Man.

(2) This Measure may be cited as the Faculty Jurisdiction Measure 1964.

SCHEDULE

1. The Rule Committee shall consist of:—

- (a) A diocesan bishop nominated by the Archbishops of Canterbury and York ;
- (b) The vicars-general of the provinces of Canterbury and York ;
 The chancellor of the diocese of London ;
 The registrars of the provinces of Canterbury and York ;
 One diocesan registrar, not being a provincial registrar, nominated by the Archbishops of Canterbury and York.
- (c) Two persons, one clerical and one lay, nominated by the Council.

2. Any three members of the Rule Committee, two of them being persons holding offices mentioned in sub-paragraph (b) of the foregoing paragraph may exercise all the powers of the Rule Committee.



Table of Enactments referred to in this Measure

Short Title	Session and Chapter or Number
Parochial Libraries Act 1708	7 Anne. c. 14.
Public Health (Interments) Act 1879	42 & 43 Vict. c. 31.
Open Spaces Act 1906	6 Edw. 7. c. 25.
Public Health Act 1936	26 Geo. 5. & 1 Edw. 8. c. 49.
Faculty Jurisdiction Measure 1938	1 & 2 Geo. 6. No. 6.
London Building Acts (Amendment) Act 1939	2 & 3 Geo. 6. c. xcvi.
Statutory Instruments Act 1946	9 & 10 Geo. 6. c. 36.
Public Health Act 1961	9 & 10 Eliz. 2. c. 64.
Ecclesiastical Fees Measure 1962	10 & 11 Eliz. 2. No. 1.