OUTRAGEOUS BEHAVIOUR

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INTRODUCTION

The past year or so has seen a number of incidents where a public service has been disrupted by a group of people seeking to make a point through the attendant publicity. An example occurred in February 1995 when the gay rights group 'Outrage' disrupted the enthronement of the Bishop of Guildford.[1] Such an incident inevitably gives rise to questions of law, and this article intends to survey very briefly the law which is *particularly* applicable in cases where there are disturbances in places of worship. Of course, both the general law concerning public order and the common law relating to breach of the peace also apply as much within churches as without. However, much is written about them elsewhere.

THE LAW

Why, then, are there special provisions, in addition to the general law, protecting churches? The reason, according to Sir John Nicholls, Dean of the Arches, in the case of *Palmer* v. *Roffey*,[2]

> '. . . is evidently to protect the sanctity of those places and their appurtenances set apart for the worship of the Supreme Being and for the repose of the dead, in which nothing but religious awe and Christian goodwill between men should prevail; and to prevent them from being converted with impunity into scenes of human passion and malice, of disturbance and violence.'

The law has always, therefore, contained provisions aimed at stopping such abuses. The spiritual courts had jurisdiction under the general ecclesiastical law in cases of brawling, and could 'interfere, to correct or punish any act of disturbance of the public worship'[3] and they were given further powers by the Brawling Act 1551.[4] Temporal courts were given similar jurisdiction by the Brawling Act 1553.[5] The spiritual jurisdiction (both under the general ecclesiastical law and by statute) over laymen in these matters was taken away by section 1 of the Ecclesiastical Courts Jurisdiction Act 1860[6]. By way of replacement, the temporal jurisdiction was strengthened by new offences, created by section 2. The offences were:

1. Riotous, violent, or indecent behaviour:
   (*a*) in any cathedral church, parish or district church or chapel of the Church of England;
   (*b*) in any chapel of any religious denomination;

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[1] The Right Reverend John Gladwin was enthroned as eighth Bishop of Guildford on Sunday 18th February 1995. The protesters from 'Outrage' stopped the Episcopal Procession before the Bishop reached the West Door to take possession of his Cathedral Church. A further disruption took place during the enthronement itself when members of the group rushed onto the chancel steps waving posters and shouting. See *The Guildford Diocesan Herald*. No. 84. February 1995.

[2] (1824) 2 Add 141.

[3] *Hutchins* v. *Denziloe* (1792) 1 Hag Con 181, *per* Sir William Scott, and also *Palmer* v. *Roffey* (1824) 2 Add 141 at 144.

[4] 5 & 6 Edw. VI c.4, repealed by the Ecclesiastical Jurisdiction Measure 1963, s.87, Sch.5, see *Williams* v. *Glenister* (1824) 2 B & C 699 at 702 *per* Abbott, C.J.

[5] 1 Mar. Sess. 2 c.3, repealed by the Criminal Law Act 1967, s.13, Sch.4, Pt. I.

[6] 23 & 24 Vict. c.32. The Ecclesiastical Courts therefore still retain jurisdiction over clerics for the common law offence of Brawling, even though the clergy are also bound by the 1860 Act: *Vallancey* v. *Fletcher* [1897] 1 QB 265.

(*c*) in any place certified under the Places of Worship Registration Act 1855[7] or
(*d*) in any churchyard or burial ground
whether during the celebration of divine service or at any other time.

2. to molest, let, disturb, vex or trouble, or by any other unlawful means disquiet or misuse:
(*a*) any preacher duly authorised to preach therein,[8] or
(*b*) any clergyman in holy orders ministering or celebrating any sacrament,[9]
(*c*) [any clergyman in holy orders ministering or celebrating] any divine service, rite, or office, in any cathedral, church, or chapel, or in any church-yard or burial ground.

The penalty on conviction by two justices is a fine[10] or imprisonment for up to two months. A power of arrest is given to any churchwarden of the parish of place[11] and an appeal to the Crown Court is provided for.[12]

The first part of section 2 was an attempt to cast in statutory form the wide jurisdiction which the Ordinary had long enjoyed, and had regularly used over this sort of behaviour, in order to confer equivalent powers on the temporal courts,[13] whilst extending them to cover most denominations and faiths. The courts have declared that the words 'indecent behaviour' should be construed in conjunction with the preceding words 'riotous and violent', and do not carry any sexual connotations.[14] 'Indecent behaviour', or 'brawling'[15] includes 'every circumstance which may lead to the disturbance of persons engaged in solemn acts of devotion'[16] or anything which is not behaviour known to the general ecclesiastical law as 'decent and orderly'. The precise scope of brawling is wide,[17] certainly wider than behaviour likely to cause a breach of the peace,[18] and will be a matter of fact for the court.[19] The level of behaviour required will be higher during a service than at other times, as it will in the church rather than, say, in the vestry.[20]

The second part of this section was based on the 1553 Act,[21] and applies only to (a) authorised preachers (that is, authorised by the Ordinary, or by virtue of the

[7] 18 & 19 Vict. c.81.

[8] Strangely, unlike the clergyman in holy orders, the preacher is protected even when not ministering etc.: see *Cope* v. *Barber* (1872) LR 7 CP 393 at 401 *per* Willes J.

[9] This part of the section covers the celebration of any sacrament outside a church etc., as the expression 'divine service' includes sacraments: see *Matthews* v. *King* [1934] 1 KB 505, [1933] All ER Rep 942.

[10] The original maximum fine of £5 was increased to £20 by the Criminal Justice Act 1967, s.92(1), (9), Sch.3, Pt. I, and is now level 1 on the standard scale (currently £200) by virtue of the Criminal Justice Act 1982, ss. 38, 46 and Orders made thereunder.

[11] 1860 Act, s. 3, as amended by the Police and Criminal Evidence Act. 1984, Sch.7.

[12] 1860 Act, s.4, as amended by the Summary Jurisdiction Act 1884 (47 & 48 Vict. c.43), s.4, and the Courts Act 1971, s.56(2), Sch.9, Pt. I.

[13] In that, it succeeded, and behaviour which is 'indecent' under this Act remains also an offence under the general ecclesiastical law: *Girt* v. *Fillingham* [1901] P 176 at 183 *per* Kempe Ch., and *Newbery* v. *Goodwin* 1 Phillim. 282 at 283 *per* Sir John Nicholl, Dean.

[14] *Abrahams* v. *Cavey* [1968] 1 QB 479 at 485E, DC, *per* Lord Parker C.J. (C.A.). See also 'Ad Ostium Ecclesiae' (1950) 114 JPJ 498. Indeed, it is only in modern cases that such an argument has been advanced.

[15] Which expression includes riotous, violent and indecent behaviour.

[16] *Newbery* v. *Goodwin* (1811) 1 Phillim. 282 at 283.

[17] E.g. *Jones* v. *Catterall* (1902) 18 TLR 367 *per* Alverstone C.J.

[18] *Taylor* v. *Morley* (1837) 1 Curt 470 at 483, otherwise '. . . any indecent or indecorous language might be used with impunity.'

[19] *R. v. Farrant [1973] Crim.L.R. 240.*

[20] *Hutchins* v. *Denziloe (1792) 1 Hag Con 181, per* Lord Stowell 'that may be chiding or brawling in the church, which would not be so in the vestry'; *Taylor* v. *Morley* (1837) 1 Curt 470 at 483 (Archdeacon's Visitation); *Worth* v. *Terrington* (1845) 13 M & W 781 at 795.

[21] Which was not, however, repealed at that time.

law itself[22]) which necessarily restricts it to the Church of England, or (b) clergymen in holy orders, which is wider, in that English Law recognises the validity of holy orders of certain other churches which have 'holy orders according to the understanding of the Episcopal form of church government.'[23] Strangely, preachers are protected at all times, whilst clerics are only protected if they are actually ministering or celebrating, thus churchwardens who stopped an incumbent from taking the collection did not fall within this part of the section.[24]

A year later, Parliament passed the Offences Against the Person Act 1861.[25] This provided, in section 36, that any person shall be guilty of an offence if he shall:

> '. . . by threats or force, obstruct or prevent, or endeavour to obstruct or prevent, any clergyman of other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place or shall strike or offer any violence to, or shall, on any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who to the knowledge of the offender shall be going to perform the same or returning from the performance thereof . . .'

The offences are triable either way,[26] and on conviction the penalty is imprisonment for up to two years.[27] The section again applies to all denominations, and the person protected is a 'minister', a description not limited to those in holy orders, and meaning a person recognised as a minister by the denomination concerned.

This section, too, has a long history. Acts imposing penalties for arresting clergy attending divine service were passed in 1376 and 1377.[28] These were replaced by s.23 of the Offences Against the Person Act 1828[29] which extended the provision to clergy going to and returning from services. This was repealed in 1861 as the 1861 Act was enacted.

RESTORING ORDER

One of the more practical aspects of this subject is the question as to what should be done by those present if there is a disturbance in a church or during a service. Generally the law protecting these holy times and places does not distinguish between parties to a disturbance, nor look to the merits behind it. All are enjoined from such behaviour, and all who partake in it will be punished.[30] Even a legitimate grievance or claim of right will be no defence, as controversial matters should

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[22] The 1553 Act was more explicit: '. . . *lycensed allowed or aucthorised to preache, by the Quenes Highnes, or by any archebishoppe or bishoppe of this realme, or by any other lawfull ordinarie, or by any of the universities of Oxforde and Cambridge, or otherwise lawfully aucthorised or chardged by reason of his or their cure benefice or other sp[irit]uall promotion or charge* . . .'.

[23] *Glasgow College* v. *Attorney-General* (1848) 1 HL Cas 800 at 823. This marked a change from the 1553 Act, which was drafted mainly in terms of offices '. . . *person vicar parishe preist or curate, or any lawfull preist* . . .' (which did restrict it to the Church of England) rather than holy orders in general.

[24] *Cope* v. *Barber* (1872) LR 7 CP 393 (D.C.), where the churchwardens were charged with molesting a clergyman. Willes, J. draws the distinction at p.401. Presumably, therefore, if they had been charged with molesting a person authorised to preach, as Mr Cope appears to have been, they would have been convicted.

[25] 24 & 25 Vict. c. 100.

[26] Magistrates Courts Act 1980, s.17, Sch.1, para.5.

[27] Six months on summary conviction.

[28] 50 Edw. III, c.5 (Quest of Clergy Act 1376), rep. Ecclesiastical Jurisdiction Measure 1963, s.87, Sch.5; and 1 Ric. II, c.15 (Quest of Clergy Act 1377), rep. Offences Against the Person Act 1828 (9 Geo. IV, c.31.), s.1

[29] 9 Geo. IV, c.31, rep. Criminal Statutes Repeal Act 1861 (24 & 25 Vict. c.95), s.1.

[30] *Palmer* v. *Roffey* (1824) 2 Add 141 at 145, 147.

not be dealt with at the times and in the places protected by this law.[31] Does this mean, then, that the only remedy is court proceedings, and that when such behaviour takes place, all who witness it must avoid any attempt at suppressing it for fear of falling foul of the law themselves? The answer is clearly in the negative. First of all, '[t]he duty of maintaining order and decorum in the Church, lies *immediately* upon the Churchwardens, and if they are not present, or being present do not repress any indecency, they desert their proper duty.'[32] They (and sidesmen) are specifically charged with the duty, to 'maintain order and decency in the church and churchyard, especially during the time of divine service' by the canons,[33] and may act to suppress such indecency by turning offenders out of the church with reasonable force, or by removing the cause of the indecency.[34] Churchwardens' powers are strengthened by the statutory power of arrest and detention[35] given in s.3 of the 1860 Act. Constables also have the power, and the duty, to intervene to restore order and decency in such a situation.[36] This is all very well in the case of a church or chapel within a Church of England parish (including a 'parish church cathedral') where there are Churchwardens. But what about non parish church cathedrals and other extra-parochial places in the Church of England or non-Anglican places of worship where there are no Churchwardens? Here it would seem that self help is not prohibited. Indeed, every person present at such an incident,[37] although not fixed with a *duty* to do so, is entitled to use reasonable force to remove any person disturbing the decency of the time or place (as if abating a nuisance). That person will not thereby be guilty of either an offence under the ecclesiastical law, or of assault and battery.[38] Such a conclusion is important for Anglican places of worship (such as cathedrals) which lie outside any parish, and, since 1860, places of worship of other denominations and faiths, where the office of churchwarden does not exist and there is the need to suppress or prevent any disturbance.

[31] *Girt* v. *Fillingham* [1901] P 176, *Asher* v. *Calcraft* (1887) 18 QBD 607.

[32] Sir William Scott, Ch. in *Cox* v. *Goodday* (1811) 2 Hag Con 138 at 141.

[33] Canons of the Church of England, Canon.E1, para.4 and Canon.E2, para.3. See also Canon.B9, para.2 (duty to give reverent attention in the time of divine service). See also 1603 Canons: 90, 18.

[34] E.g., by forcibly removing the hat of an offender who refused to do so: *Haw* v. *Planner* (1666) 1 Wms Saund 10; 1 Sid 301; 2 Keb 124. The latter report also suggests it was lawful to chastise boys playing in the churchyard. See Hawkins, *Pleas of the Crown*, (8th Edn.) ch.28, s.29.

[35] See *Williams* v. *Glenister* (1824) 2 B & C 699 at 702, but the right of detention is only until the service has ended, and then to take the person before a justice of the peace.

[36] *Williams* v. *Glenister* (1842) 2 B & C 699 at 702.

[37] *Hutchins* v. *Denziloe and Loveland* (1792) 1 Hag Con 170 at 174.

[38] *Glever* v. *Hynde* (1673) 1 Mod Rep 168 (approved in *Burton* v. *Henson* (1842) 10 M.&W. 105 at 108). Counsel for the defendant cited the example of Christ in the Temple as a precedent! Even the minister may do so, but such a situation is best avoided: *Cox* v. *Goodday* (1810) 2 Hag Con 138 at 141. See also Phillimore, p.740 and Gibson, p.304. For an injunction under the 1860 Act, see *Saffron Walden Parochial Church Council* v. *Walker* 12 Oct. 1995 (unreported).