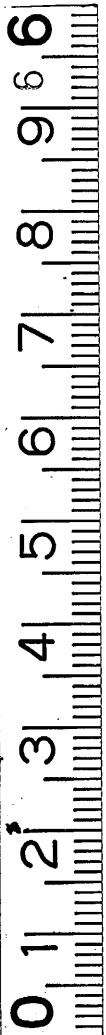


53-16



0047

N

THE
EXACTIONS
 AND
IMPOSITIONS
 OF
P A R I S H F E E S
 DISCOVERED.

Shewing the common Fees demanded for Chri-
 stnings, Marrying, Churching of Women,
 and the Burying the Dead; to be contrary to
 the Law, whereby Persons may (if they
 please) save a great deal of the Expence they
 are generally at, for want of understanding the
 Law in those Cases; with a touch upon di-
 vers Clerical, and Parochial Errors, that are
 crept into the Church.

And the Opinion of Mr *Strange*, Sollicitor-General to
 his Majesty, on a Case here stated.

By FRANCIS SADLER, B. M.

L O N D O N,

Printed for the AUTHOR, and Sold at the
 Booksellers and Pamphlet-Shops in *London*
 and *Westminster*, and by the Author at *Star-*
gate, Lambeth. 1738.

Price One Shilling and ~~Six~~ pence.

9



THE

P R E F A C E.

ANDID Reader, the Subject I have undertook may appear to some as surprising as uncommon: And I must confess I was not a little surprized myself, to see such unwarrantable Practices in the best reformed Church daily committed with Impunity; namely, the selling of the Offices of the Church; the refusing to perform diverse Offices therein without the (pretended) Fees first paid, together with such oppressive and exorbitant Demands as have occasion'd

B abundance

The P R E F A C E.

abundance of People, (especially the poorer sort) to complain, and groan under them. I could heartily wish some more able and learned Pen than mine had taken this Subject in hand, there being more than a bare probability, that for one Fault I have found, they would have discover'd ten, although I have been threatned to be torn to pieces for what I have written, could it be proved to come within the verge of the Law: Indeed I believe some People take it for granted, that what is done by a Vestry carrieth a sufficient Sanction along with it, without giving themselves any further trouble to enquire into the Legality of it. What I have written is chiefly a Collection from Authors of the best Authority; and to corroborate my Pretensions, I have it from under the Hand of one of the most ablest Counsellors at Law, That there is no Fee to be paid for the Ground of the Church-yard, for any that die in the Parish; and if there were any thing due to the Minister, it ought to be certain, and always alike; and I have taken the liberty to print the same with the Book, that my Antagonists may see I am neither afraid, nor ashamed of the Opinion of so eminent a Man of the Law. And if any Person has a mind to take a view of the Case, Queries, and Opinion of the learned Counsel, the original Case under his own Hand writing may be seen at my House at Stangate, Lambeth, in Surry. I have been threatned to be
sued

The P R E F A C E.

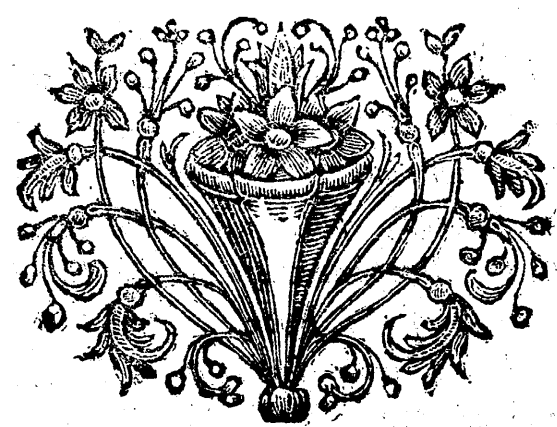
sued both by the Clerk and Sexton for advising the poor People to make an offering to the Minister according to their Ability, without complying with their exorbitant Demands; and they have likewise threatned to sue those that have barely made an offering to the Minister for performing the Offices of the Church, but neither Minister, Church-wardens, Clerk, nor Sexton, separately, or in Conjunction, have undertook to prosecute me, or any other, that only made an offering, although we have buried some hundred Corpses without paying them their Fees, as their call them.

And I appeal to the great God, who is the searcher of all Hearts, That I did not set Pen to Paper either out of Prejudice, Passion, Partiality, or Interest, but with a real intent to put a stop to the Prophanation of the Church, and the Oppression of the Poor. And I do solemnly declare, that I have so great a Veneration for the Clergy of the Establish'd Church, that I should rejoice to see all our poor Benefices were made sufficient to maintain the Clergy, to support their Dignity, as Ambassadors of Christ, and Men of Learning. But so long as there is so many rich Lay Impropropriators, there will be such poor Vicarages; although there is a Law now in force, that it is in the power of the Diocesan to summons the Impropropriator to shew Cause why he doth

The P R E F A C E.

not allow a better Maintenance to the Vicar. A very good Law when put in Execution ; for then there might be enough to maintain the Clergy without Pluralities, and leave no room for the Enemies of our Church longer to revile us with careless Non-residence, encroaching Pluralities, unconscionable Simony, and neglect of Duty.

Francis Factor



C A S E.

C A S E.



THE Inhabitants of the Parish of A apprehend they have been very much Imposed upon in respect of the Fees or Duties that have been paid by them for burying of the Dead. It having been a common practice to sell the Ground in the Church-yard wherein the Dead are buried at different Prices, and frequently to ask more than was taken, which gave room to suspect that there was nothing at all due : And upon perusing some Books that treat of the Fees and Profits, &c. which belong to the Clergy ; they were confirmed in that Opinion, for in the Clergyman's *Vade Mecum*, pag. 261. It is express'd, that Sacraments must be administred freely, and *ex officio*.

And in pag. 263. It is express'd, That the Priest must not demand Money for reading the Office of Burial, or breaking up the Ground ; for either of those, with the Canonist, are deemed direct Simony.

And Sir *Simon Degge*, in his *Parson's Counsellor*, pag. 175. says, That by the Custom of *England*, every Person (except such as therein are excepted) may be buried in the Church-yard of the Parish where he dies, without paying any thing for breaking up the Soil.

And

(ii)

And in pag. 189. he says, Church-yards are consecrated Ground, and participate of the Privileges belonging to the Church, and that the Parishioners may there freely bury their Dead without Contradiction, or paying any thing for breaking the Soil.

Therefore several of the said Inhabitants have agreed to stand by and defend each other, in case they, or either of them, shall be sued or prosecuted for refusing to pay any unwarrantable, or illegal, Fees or Duties, that shall or may for the future be demanded of them for burying their Dead in the Church-yard; and for that purpose have by writing under their Hands, bound themselves respectively to each other to bear and pay a proportionable part, or share of such Charge and Expence that any, or either of them shall be put unto by such Suit or Prosecution as aforesaid.

Q U E R E.

Therefore whether any, or what Fees or Duties are due and payable to the Parson of the Parish, or any other Person for burying the Dead in the Church-yard.

And if any, whether the same ought not to be certain and always alike.

This case stated as above, was laid before Mr Strange now Solicitor-General, who return'd the following as his Opinion.

I think every Parishioner has an undoubted Right to be buried in the Church-yard without paying any Fee for breaking of the Ground; and

(iii)

and I think it will be the same in the case of an accidental Death, and of one not a Parishioner: It being for the sake of the Living that the Dead should be buried. The best way to try the Right to these Fees, is to pay what is demanded, protesting against the Right, and then to bring an Action for Money had and received to the use of the Party who is compell'd to pay it, who should be the Executor, or Administrator. A Variation in the Fees, is a strong Evidence against the Right, for if any thing is due, it ought to be certain.

The following Q U E R E was also asked.

Whether it may be deemed unlawful for the Inhabitants to enter into such Agreement as aforesaid, and how the same will be construed in the Eye of the Law.

To which Mr Strange returned for Answer.

Where the Question concerns all the Inhabitants, or a body of Men, as Commoners, or the like, these Agreements are not deemed illegal.

T H E



THE

Exactions and Impositions

OF

PAROCHIAL FEES

DISCOVERED.



Paper having been delivered to the Parishioners of *Lambeth* in *Surrey*, relating to Parish Fees, wherein it was asserted, That all Money demanded, and taken by the Minister, or any other Person, or for the Minister, or for any other Person for a Fee, for the performing any Offices of the Church, for the Ground of the Church-yard, or the use of any thing

C

(2)

thing belonging to the Church, is simonical, and defrauding of the People, under the pretence of Law ; for that there is no other Dues belonging to the Church, but Glebe, Tythes, and Offerings, for the maintenance of the Minister that hath the Cure of Souls within the Parish, and the Church Rates.

It being Simony to demand and take Money for performing any Office of the Church ; as also to take Money for breaking the Ground of the Church-yard ; and simonical to take Money for the use of any thing belonging to the Church.

It is making the Church a Market-House, to take Money for the use of any thing belonging thereto. But, notwithstanding 'tis Simony to take Money for the performing any Office of the Church, yet any Person that hath any Office of the Church performed must make an Offering to the Minister, for the performing of the Office ; but if the Person that hath the Office performed hath but a Penny, and tendreth that for the Office, it is a sufficient Offering ; for there is no Law or Canon prescribes what Sum shall be offered.

The chief Motive that induced the Author to undertake the Vindication of the aforesaid Paper, was because he had great Reason to suspect there was too much Oppression and Fraud cover'd under a specious pretence of Law ; and having zealously opposed and expressed his abhorrence of such vile Proceedings and Practices ; has been often vilified with the odious epithets of Fool, Knave, and what not ; and some Persons of Distinction, having
taken

(3)

taken the liberty to speak contemptibly of the Undertaking, as coming from an illiterate Mechanic, from whom they could expect no great share of Learning, and whose Judgment they might wisely presume had never been sufficiently polish'd by Education ; to them he must humbly confess that he cannot pretend to much Learning (tho' a great Admirer of it.) His chief Design being to open the Eyes of his Fellow Subjects and Parishioners, especially the poorer sort, that they might not be ignorant how greatly they were imposed upon in parochial Fees, (falsly so called) to be constrained to part with their Properties to the Clerk or Sexton who have exacted those pretended Fees for the Minister, and their own use ; he does not here presume to assert that what he has here written is done with the utmost Exactness, (for he utterly renounces Infallibility) but does honestly and plainly assure the Reader, that they are Collections from Books of unquestionable Authority ; having been well received both by the ancient and modern Divines of the Establish'd Church ; and although the garb it is dressed in may appear to some too uncouth and unbecoming one in his Station ; being but a mean Mechanic, yet he hopes his Occupation and want of Time will plead an excuse for coming short of the refined modern mode of Speech, it answering his end, if understood by the commonalty ; and if they receive any Advantage by his Labour, is all he wishes and desires. If he has made any useful Discoveries of what before was not so fully understood (at least by many

(4)

of the lower class) he will esteem his Time and Charge well employ'd; yet did he not labour under narrow Circumstances, and a daily Care to provide for a large Family, he might have swelled this small Tract into a larger Volume; nor had he ever appear'd in Print, had it not been for Justice sake. And hopes the candid Reader will accept of his Good-will to serve his Country; having no other view than to prevent the Church being prophan'd, and other Impositions by Persons who assume a Prerogative beyond the Law, to the Damage of several poor Families, who unable to stand in Competition with the Rulers and opulent Men of the Parish, daily groan under their arbitrary Proceedings. If what he has written be sufficiently warranted by authentick Authors, his Design is justified; and for Threats and Detraction I neither fear nor value; for if what I have inserted is false, let them sue me as a Libeller, tho' I could sooner pardon those who fought manfully to take away my Life, than they who basely murder my good Name; being persuaded that the Wounds which are given by the Tongue of a Slanderer cut deeper than those that are given by the Sword. And it is a great Aggravation to any Man, who has personal Courage enough to face his greatest Enemy.

I shall now proceed with all Conspicuity and Brevity I am capable of, in Vindication of the foregoing printed Paper, which has been so severely ridiculed and censured by my Adversaries, and given them great Umbrage; and herein I propose the following Method.

First

(5)

First, I shall shew how unjust and unreasonable it is to take Money for the performing any Office of the Church, or the Ground of the Church-yard for burying the Dead.

Secondly, The scandalous and shameful (though common) practice of making People pay a proportionable Rate for the use of the Bell, when rung for the deceased.

Thirdly, That a Parish hath no legal Power to make a Table of Fees; and that all Money extorted from the People under that pretence; or an Order of Vestry, is no better than Robbery under the pretence of Law, except the Poores Rate and Church Rate.

Fourthly, I shall shew how the Church Rate ought to be raised, and how applied when raised, together with the practice of most Parishes of laying out their Money when it is raised.

First, I am to consider the Unlawfulness of taking Money for the performing any Office of the Church, either by Minister, Clerk, or Sexton: And shall endeavour to prove that it is contrary to the Laws of both God and Man. There are several Passages in Holy Writ to evidence the Truth thereof, particularly in the first Book of the Prophet *Samuel*, Chap. ii. ver. 16. where it is said, That the Sons of *Eli* took the Offerings of the People by force from them, for which they were called the Sons of *Belial*. And Christ, the Eternal God, when he drove the Money-Changers out of the Temple, told them, *My House shall be called*

(6)

called of all Nations the House of Prayer, but ye have made it a Den of Thieves, Mark xi. ver. 15. And he said to his Apostles, *Freely have you received, freely give*; which Words plainly imply a forewarning of them not to take any Money: But it is to be feared too many of our Clergy (in these Days) look upon Money as their chief Good, or they would not venture to put Heaven to sale, by selling the Offices of the Church; for daily experience assureth us, that where there is no Money there shall be no Office perform'd. St *Austin* and St *Gregory* held the taking of Money in the Church, to be Heresy, if not the Sin against the Holy Ghost. See *Parson's Counsellor*, pag. 42. And our own Canons of *James I.* says thus, To avoid the detestable Sin of Simony, because the buying and selling of Spiritual and Ecclesiastical Functions, Offices, Promotions, Dignities, and Livings is execrable before God, &c. Canon 40; No Minister shall refuse or delay to Christen any Child, according to the Form of the Book of Common Prayer, that is brought to him to Church on Sundays, or Holidays to be christned; or to bury any Corps that is brought to the Church, or Church-yard, Canon 68. It is the burying the Dead for which there is such extravagant Fees demanded, when there is none at all due, but an Offering to the Minister, for performing the Office. It is taken for granted by most People, that those Fees are a just due, and some Clergymen have been so exorbitant as to threaten to sue for double Fees for burying the Dead; and we find a very remarkable Instance

(7)

stance in the *Parson's Counsellor*, pag. 155. where he tells us, That it was on account of the burying of a Child; that was the Cause of the first dispute touching the King's Supremacy in *England*; and in the Acts of the Church, in *Hunn* and *Horsey's* Case, and is thus related, *Hunn* had a Child died, for which a Fee was demanded; but *Hunn* said the Child had nothing, and as it had nothing, nothing could be paid; and it was their place to bury their Dead, upon which *Hunn* was cited into the Commons for not paying, but *Hunn* moved it by a Prohibition to Common Law, and cast them; and sued Dr *Horsey* in a Premunire for demanding of Money where there were none due, as you may find in *Kelwayes's Reports*, pag. 182. upon which *Horsey* caused *Hunn* to be arrested on suspicion of Heresy, and committed him to *Lollard's* Tower, the Bishop of *London's* Prison, where *Horsey* and the Goaler murder'd *Hunn*; as you may find in the Church Acts the Case of *Hunn* and *Horsey*. This Cause was brought before the Parliament, and after hearing the Merits thereof, that August Assembly made an Act what should be paid for a Mortuary for the Dead, and is thus expressed, (*viz.* and to make good Tythes not paid, by the Decedent when alive)

1. That no Man should pay a Mortuary, unless he died possessed of Goods to the Value of ten Marks.

2. That

(8)

2. That no Mortuary should be paid or demanded but in such places where they have used to be paid or given.

3. That they should be paid but in one place, and that at the Party's most usual place of Dwelling and Habitation, and there but one Mortuary, and that after the Rate following, *viz.*

4. That if the Decedent at the time of his Death had in moveable Goods to the value of ten Marks clearly, his Debts first paid; and under the Sum of thirty Pounds, then he should pay three Shillings and four Pence, and no more; and this must be out of the moveable Goods, and not in Chattles.

5. That if the Decedent died possessed of Moveables of the value of thirty Pounds, and under the value of forty Pounds, to pay six Shillings and eight Pence, for a Mortuary, or an Offering for the Dead.

6. If the Decedent's Goods be of the value of forty Pounds and upwards, then to pay ten Shillings for a Mortuary.

7. That no married Woman, Child, or Person not keeping House should pay any Mortuary, nor a Way-faring Man, *Stat. 21. Hen. VIII. chap. 6.* this is all that can be demanded, except an Offering for the performing of the Office of the Church. *Note,* This was done in the times of Popery and Superstition, when Money was given to pray them out of Purgatory, that Money was given for burying of the Dead.

I shall

(9)

I shall in the next place shew what is the Minister's Due, which I shall endeavour to prove from authentic Authors, and not from my own Conjecture.

The Profits and Fruits of a Parson or Vicar are his Glebe, Tythes, and Offerings establish'd by Law, for the Maintenance of the Minister that hath the Cure of Souls within the Parish, *Parson's Counsellor*, pag. 190.

There is no dispute about the Glebe or Tythe being the Minister's Due, but it is the Offering that is in dispute, what, and for what they be.

Mr *Shephard*, in his *Parson's Guide*, telleth what Offerings are, as followeth; Offerings (saith he) are reckoned among personal Tythes, which are such as come by mens honest Labour and Industry, in some personal Work, *Parson's Guide*, pag. 4. Those that pay Tythe for Lands, need pay no *Easter-Offerings*. Oblations, Obventions, were said to be such things real or personal as were offered to God and his Church by Testament, *Parson's Guide*, pag. 4.

Let us now see what the Statute of *Edw. VI. Cap. 13.* says, That all and every Person and Persons, which by the Law and Custom of this Realm, ought to make or pay their Offerings, shall yearly from henceforth well and truly content, or pay, his, or their Offerings to the Parson, &c. And where Handicraftmen have used to pay their Tythes or Offering within this forty Years, the Custom is to be observed, (here personal Tythes are called Offering, and must be as the Custom of the Place is.) And Sir *George Crook* says, that in some Places Servants pay the Parson or Vicar a small Sum in

D

the

(10)

the nature of an Offering; *Crook's Reports*, Vol. I. pag. 247. If Offerings be not a personal Tythe, there is no personal Tythes due: *Bishop Stillingfl.* Ecclesiastical Cases, pag. 252.

That Offerings for an Office of the Church being performed is due, is not denied, but there is no certainty in an Offering, as is the Custom and Practice almost in all Places; for if a great Bell be rung for the Dead, then it is a great Price, as if the sound of the Bell enhances the largeness of the Offering; But Sir *Symon Degg*, in his *Parson's Counsellor* saith, There being no Canon or Law, that prescribes any certainty in the Quantity, Value, or Things to be offered, I can give them no properer Name than Voluntary or Free-will Offerings; *Parson's Counsellor*, pag. 351. And those Clergymen that demand Money for the performing any Office of the Church are guilty of Simony in so doing; and in the Clergyman's *Vade Mecum* these are his Words; However the Opinion of those who take *Easter-Offerings* to be paid for the Sacrament is less tolerable than that of *Lynwood*, for that is directly contrary to the intention of many antient Canons which called this Simony. I am sensible, that the Canonists with their Sophistry, taught the Clergy to evade these Canons, particularly by telling them, that tho' they might take nothing for Baptism, yet they might sell the Water before it was consecrated, to the Parents of the Child: And they might with as much reason say, that though Money might not be given for the Eucharist, yet the Host before Consecration might be purchased by him who was to receive it; but Sa-

craments

(11)

craments are to be administered freely, and *ex officio*, pag. 264. And again he says, for the Canon Law condemns it as gross Simony, to take or pay Money for Sacraments, or any sacred Office, or breaking up the Ground; for either of these are with the Canonists direct Simony, or refusing to perform any religious Office without having the Money first paid; this on all Occasions they declare to be Simony, pag. 263. Now if there be so many Laws, (as most certain there is) with what assurance can there be such Demands for burying of the Dead, as there is; for, if it be Simony to take Money for the breaking of the Ground of the Church-yard, how can the Clergy suffer the Church-wardens to take Money for the Ground, which is their Property, (as I shall shew by and by.) In the mean time I shall demonstrate that in conformity to the Rubrick and Canon, no Minister should go to a private House to baptize a Child that is like to live, and use the publick Office of Baptism in private, and expect to be recompensed for the same; so that the pretence of being paid for his Journey is more unconscionable than to take a Reward for the Water, for then he expects to be paid for acting contrary to his Duty. See Clergyman's *Vade Mecum*, 262. So that upon the strictest Inquiry into the Matter, it will be found, there is no other Duties belonging to the Church but Glebes, Tythes, and Offerings; and that all other Demands of Money is Extortion, and defrauding the People under the pretence of Law. It has been reported and complained of, that some Rectors have not been satisfied with

D 2

their

(12)

their Tythes, Glebe, and Offerings, but must participate of the Money exacted by exorbitant burying Fees; and many times the Money so extorted is from People who have labour'd under such narrow Circumstances, as to be compelled to pledge their necessary Utensils to purchase a Coffin and Shroud; and afterwards been obliged to their Neighbours for their charitable Contribution to help to defray these exorbitant Fees, illegally, and consequently unjustly taken. Thus having shewn, with the utmost brevity and perspicuity as possibly I could what are Clergymens Dues; I shall conclude this Head with that remarkable Passage in the Parson's Counsellor of the Council of *Triburienfis*, Canon 16, pag. 175. where it is preremptory declared, there is nothing ought to be demanded or paid for Burials. In the next place, I shall shew the Duty of the Clerk, what his Office is, and who are to chuse him, and by whom to be paid.

The Clerk's Duty in the first place, is to attend the Minister at Divine Service, and to keep the Seats and Church clean; and for that purpose to have in his custody the Keys of the Church, to ring to Prayers, and to do other Offices pertaining to the Church. *Parson's Counsellor*, pag. 184.

Bishop *Stillingfleet* in his *Ecclesiastical Cases*, faith, There were of old several Clerks belonging to the Church, and they were all maintained by the Minister at his own Charge, pag. 131, 132. Now if the Minister is obliged to maintain the Clerk, I would gladly know by what Law the Clerk can demand a

Fees,

(13)

Fee, (as has been too commonly practised) for the Office of any part of the Church, who neither doth, nor dare presume to perform any Office of the Church; and he can claim no more right to a Fee for any Office of the Church being perform'd, than a Highwayman has to the Money he takes by Robbery: I will take the liberty to ask such Mercenaries one Question, (*viz.*) If the Law will punish a Man for doing a thing, can any Man think that he who is punishable for doing that thing, has any right to be paid for the thing being done; the parallel holds good with relation to the Clerk, for he dare not perform any Office in the Church; and if he is not allowed to perform, how can he have any thing due, if there was any thing due; having shewn what his Office is, and who is to pay him. I proceed to shew in the next place, who is to choose him. By Canon 91, he is to be chosen by the Minister, but by the Book 3 *Edw. III. Annuits* 40. he is chosen by the Parishioners: And in Mr *Huge's* Parson's Law, he hath these Words, The Parish Clerk is an Officer in the Church too, but he is most commonly a Layman, and no Ecclesiastical Person, and his Office is a lay Office; and therefore is to be chosen by the Parishioners, and not by the Parson or Vicar alone; and he is removeable upon Cause from his Office at their Will and Pleasure, as appears by the Book of the 3 *Edw. III. Annuits* 40. These are the Words of Mr *Huges* in his Parson's Law, pag. 115. And by the Lord Chief Justice *Coke*, and the whole Court, it was adjudg'd, That the Canon was against the Common-Law

2

in

(14)

in *Cundit's* and *Plumer's* Case ; for so is the Book 8 Affi. *James* I. And my Lord *Coke* order'd an Information to be drawn against the Spiritual Court, for holding Plea of a thing which was meerly Lay, 8 Affi. 29. Thus I have shewn what the Clerk's Office is, and who is to chuse him ; (but if the Parishioners chuse him they are obliged to pay him by the Year 3 *Edw.* III. *Ann.* 40. I shall now proceed to set forth what prerogative the Church-wardens have to lett out the Church Ornaments for Money ; and by what Authority they take Money, (or rather sell the Ground of the Church-yard.) The letting of the Bell, and obliging People to pay for the use of it, when rung for the Dead. I would not be suspected to lay any Imputation upon Church-wardens for taking of the Money, since they are impower'd to take it by order of Vestry, (which is taken for granted by the Commonality, to be a legal Authority :) But altho' it is contrary to Law, and consequently unjustly taken, as bearing no Sanction ; yet is it very orderly brought to the Parish Accompts, without the least hesitation or scruple of Wrong done by imposing upon the Parishioners ; therefore I shall by and by shew what Power a Vestry hath to raise Money, and for what, and how applied, when raised ; In the mean time I shall set forth by what Authority the Church-wardens sell the Ground of the Church-yard, which is the Minister's Freehold, though the Fee-simple is not in him, therefore has no Power to put to sale the Ground of the Church-yard, on no account whatsoever ; for it is Simony to make sale of any thing belonging

to

(15)

to the Church ; for the Minister has no right to sell, although the Freehold is in him ; the Fee-simple is not in him ; and no Man can sell that hath not the Fee-simple in him ; that the Minister is not invested with the Fee-simple, is plain from that famous Author *Coke* upon *Littleton*. The Intendment and Consideration of the Law ; it was provided that it should be so, by the Wisdom and Policy of the Law, that the Parson or Vicar who hath the Cure of Souls, and are bound to celebrate Divine Service, and administer the Sacraments, might have somewhat to live upon ; and therefore the Law provided, That the Fee-simple of the Glebe should be out of them ; *Coke* upon *Littleton*, pag. 341. For if the Fee-simple was in the Minister then he might sell, and so leave his Successor nothing to live upon ; but the Freehold is in him without doubt, and the Fee-simple in the Patron ; but the Parson himself (as I said before) hath the Freehold in him, as also the right of the Church and Church-yard ; *Parson's Law*, chap. 21. pag. 33. The Church-yard therefore is a common Burying-place for the Parishioners, although the Freehold be in the Incumbent ; *Clergyman's Vade Mecum*, pag. 19. The Freehold of the whole Church and Church-yard are in the Parson, or Rector ; *Parson's Counsellor*, pag. 162. and by *Stat.* 11. *H.* IV. 12. and 21 *H.* VII. 21. The Freehold of the Church and Church-yard is the Minister's. I shall now consider what Power the Church-wardens have to sell the Ground of the Church-yard, and as the Freehold is proved to be in the Minister, what Prerogative have the Church-wardens to

sell

(16)

sell the Freehold of the Minister, and by what Authority they make the People pay for burying of the Dead in the Ground they have no Property in; and those Church-wardens that demand, and take Money for the Ground of the Church-yard, and know it to be the Minister's Freehold, defraud and rob the People under the Pretence of Law, although the Minister is the greatest Aggressor, who knows that the Church-yard is his Property, and will suffer it to be sold; therefore the Minister that selleth the Ground of the Church-yard, or suffereth it to be sold, is guilty of Simony; and I am persuaded there are few or none of our Clergy can plead Ignorance on that Score; again, tho' the Freehold be in the Minister, the Parishioners may bury the Dead without leave of the Minister, or Church-wardens, or paying for the Ground; but what seems to give it a Sanction, it is done by Order of Vestry, and therefore must be Law; wherefore I think it incumbent upon all Ministers to acquaint the Parishioners that it is out of the Power of an Order of Vestry, or even himself, to take Money for the Ground of the Church-yard, such illegal and irregular Proceedings has often proved a sore Grievance to poor People, who have been often constrained to pawn and sell that which they could never be able to redeem again, on the Score of being compelled to pay for the Ground to bury their Dead in; and I am persuaded, had such mercenary vile Proceedings been practised when Christ was upon the Earth, he would have ranked all such Persons among the Number of Money-changers, that buy and sell within the Church.

(17)

Church. Sir *Simon Degg* in his *Parson's Counsellor*, saith, that the Church-yard is free, these are his Words, It is consecrated Ground, and participate of the Privileges belonging to the Church before-mentioned, and the Parishioners may here bury their Dead without Contradiction, or paying any Thing for breaking the Soil, *page 184.* Now with what Pretence can Money be demanded for breaking the Ground, as is customary in almost all Places, especially in and about *London*; and must the long Continuance and pleading Custom for such arbitrary Proceedings pass for Law, or because the Clerk or Sexton keeps an Office where you are obliged to go and pay your Money beforehand, or otherwise you may keep your Dead above Ground for them, when at the same Time there is no more Right to pay for the Ground, than to give Money to a Highwayman for riding along the Road. The next Thing that cometh under Consideration, is, the paying for the Bell, when rung for the Dead, a Practice in all Parishes by an Order of Vestry at first, but not being founded upon any Law, it ought to be looked upon as a meer Artifice to extort Money from the People, for what Power can a Vestry have to make a Law, who cannot raise Money to maintain their own Poor of themselves, (as I shall shew hereafter) however by Virtue of their Authority, you must pay for the Use of the Bell; and if you will not pay for the ringing of the Bell, I dare venture to give it under my hand, you will have no Bell rung, though at the same time, assure you, it is at your own Option whether

E

you

(18)

you will have a Bell rung or not ; it is apparent, that Dissenters have no Bell rung for them, by reason it is the Practice in all Places, that if you have a Bell rung, you are obliged to pay the Parson and Clerk their Fees, as they call them, whether they bury the Corps or no, as if the ringing of the Bell entitled them to an Offering, as much as if they had performed an Office of the Church ; but, sure I am, where there is no Office performed, there is no Offering due (except *Easter Offering*). Let us now see what the Law says touching the Bell being rung for the Dead, and to whom the Bells belong, and upon what account they may be used ; by our Canon Law, a Bell shall be rung for any Person dying, or to be buried ; the Canon runs thus, When any Person is dangerously sick in any Parish, the Minister or Curate having notice thereof, shall resort unto him or her (if the Disease be not known, or probably suspected, to be infectious) to instruct and comfort them in their Distress, and when they are passing out of this Life, a Bell shall be tolled, and the Minister shall not then slack to do his last Duty, and after the Party's Death (if it so fall out) there shall be rung no more then one short Peal, and another before the Burial, and one after the Burial, Canon 67. *N. B.* Here is no mention made of paying for the Use of the Bell, but that a Bell shall be rung, which implies a positive Command for the doing of it, whether paid for or not ; from whence I infer, if it be lawful to let out any of the Church Ornaments for Money, it would be the Parishioners due to have

(19)

have it, for the Bells and the rest of the Church Ornaments are the Parishioners, in the Hands of the Church-Wardens, *Parson's Counsellor*, pag. 177. If we may be allowed to suppose it lawful to make the House of God a House of Merchandize, (which is expressly prohibited both by divine and human Law) there is no Reason, neither Law, that a Man shall pay for the Use of his own ; for all the Ornaments of the Church are as much one Man's as another's, and no Man is indebted to another for the Use of his own ; for could Mr *Justice* have proved that he had been a Fellow of the College, as he was a Gentleman-Commoner at *Cambridge*, he then would have had a Right to the Books that was found upon him, and not have been transported ; for the Question upon his Trial was, Whether he was a Fellow, or only a Gentleman-Commoner, and he could not prove himself a Fellow ; and by the same Parity of Reason, we may as well say, That a Man must pay for living upon his own Freehold, as to pay for the Use of his own. In short, the only principal Use of the Bell is to be rung for the Dead, and to give notice that divine Service, is a-going to begin, which is all the Use for which Bells were at first instituted ; but are now often appointed to be rung on Rejoicing Days, and for Pleasure, altho' in most Christian Countries they are dedicated to God, before they are put up in Churches, as are all other Ornaments for the Service of the Church, and the Church itself must be dedicated before Divine Service can be performed in it, for if there is Sin committed either in

E 2

the

(20)

the Church or Church-yard, the Church must be reconsecrated; there shall be no Fairs nor Markets in the Church or Church-yard, nor Mustering of Soldiers, according to the Canon, which says, That the Church-Wardens and their Assistance, shall suffer no Plays, Feasts, Banquets, Suppers, Church Ales, Drinking, Temporal Courts, or Leets, Lay-Juries, Mufters, or any other profane Usage in the Church, Chapel, or Church-yard, Canon 88. And Sir *Simon Degg*, in his *Parson's Counsellor*, says, that by the Council of *Nice*, it was decreed, That if any Murder, Adultery, or Fornication is committed, or the Church burnt, or the Altar removed, the Church must be reconsecrated, *Parson's Counsellor*, pag. 162. It is a great Indignity to our established Church to be reproached by the Kirk of *Scotland*, who will not suffer their Churches to be profaned by Money-Changing, and their Ministers are content to live upon their Tythes, and Dues, and not to put to Sale the Word of God, for they have nothing for the Performance of any Office of the Church, neither do they sell the Ground of the Church-yard, or take Money for the Use of any Thing belonging to the Church.

It is now Time to consider what Authority a Parish hath to make a Table of Fees, (as they are called) which is done in most Parishes, and to give it a Sanction (the better to impose upon the Ignorant) have it carried to *Doctour's Commons*, and there filed up as Law, and the Canonists are so just, as they will allow of taking Money in the Church, tho' their Law expressly says none shall be taken; but we have

too

(21)

too often found Right, and Wrong, confounded and sunk by sophistical Terms and Distinctions among the *Logicians*; for it is not in the Power of any Court of Judicature to make a Law, for no Law can be made but by the three Estates assembled in Parliament; and I remember, when some Gentlemen were accused before the House of Commons for being Abettors in a Riot, they were committed to the Gate-house, by order of that august Assembly, whereupon they moved the Court of King's Bench to be admitted to Bail, when that impartial Judge the Lord Chief Justice *Holt*, with an undaunted Courage, said, That he valued not a Vote of the House of Commons, nor a Vote of the House of Lords, nor an Order in Council; when it passed into a Law, he would obey it, till then it was no Law, and that those Gentlemen wereailable by the Law of *England*. If the King, Lords and Judges together, without the House of Commons, whose sole Prerogative it is to give Money, cannot make a Law, how much less dare a Vestry, who are often composed of illiterate Tradesmen, when met together, assume a Power of making Laws to raise Money, and that perhaps to be told over a Grid-Iron, when all Grants of Lands and Hereditaments made in Trust to the Use of the Church-Wardens (tho' but for a Term of Years) is void, because they are no Corporation, *Stat. 23. H. VIII. ch. 10.* Church-Wardens can receive no Lands, nor let Leafes, *Coke upon Littleton, pag. 3.* And if they are not impowered to receive Lands, how can they sue for Money, they pretend to raise, as is
contrary

(22)

contrary to Law; they cannot sue for Money for the Maintenance of the Poor till signed by the Bench of Justices, much less sue for Money of their own Authority and Power; it is forbid by the Laws of God and Man to raise Money of Things within the Church, consecrated and dedicated to God. Mr *Hughes*, in his *Parson's Law*, says, That the Parishioners cannot sue the Church-Warden, that hath any ways wasted the Church-Goods, for there is no Law to help them, *Parson's Law*, pag. 115. Thus far I presume I have made appear, That a Vestry hath no Power to raise Money by a Table of Fees, otherwise called Surplice-Fees; and I refer the Reader likewise to that great and remarkable Cause in the fifth Year of the Reign of *James I.* in the Case of Customs, Subsidies, and Imposts, upon Judgment given in the Exchequer, when the Judges were all summoned to consult on the same, *Popham* Chief Justice of the King's-Bench, and *Coke* Chief Justice of the Common-Pleas, gave their Judgment, as followeth, That the Rule of the Common Law is the People's Register; also another Rule, That the King may charge his People to a Thing which may be to their good, but not to their charge, *Stat. 13. Hen. IV. 16.* and by *Magna Charta*, which hath been confirmed thirty Times, none shall be taxed but by Parliament, and of long Time it hath been used by Parliament to grant to Kings at the beginning of their Reign, certain Subsidies of Tonnage and Poundage for Term of Life, which began the second and third of *Hen. V.* and the thirty-second of *Hen. VI. cap. 8. and 12.*

Ed.

(23)

Ed. IV. cap. 3. by which it plainly appears, none but the Parliament can impose any Thing on the Subjects, in any case whatsoever, *Coke's Reports*, Vol. 12. in the case of Customs, Subsidies, and Imposts. I shall in the next Place shew, wherein, and in what respect the Laity have an Advantage of the Clergy, (*viz.*) If the common People sue for that that is not their due, they only pay the Damage and Cost, but if the Clergy sue (in many Cases) they may bring themselves in a *Premunire*, that is, they are Enemies to the King and Country, and out of the Protection of the Law, which Act of *Premunire* was made to put a Stop to the Power of the Pope and Clergy in the Times of Popery, for they were then for getting all into their Hands, for which cause this Act was made to hinder them; by the Act of *Premunire* they forfeit all their Goods and Lands, and to be imprisoned when this Act is in Force against them, and this Act lies against them when they sue for their Tythes in the Ecclesiastical Court, when they have been set out from the nine Parts, for then they should sue for the carrying them away at Common Law, and not in Court Christian, and so of a Mortuary, if delivered and retaken, or any Ecclesiastical Judge to decide that by the Civil Law which belongeth to the Common Law, the Bishop of *Norwich's Case*, 25. *Hen. VIII. Coke's Reports*, Vol. 12. *Case of Premunire*. Or if the Parson sue for a Fee for the performing any Office of the Church, as Christening, Marrying, Burying, or Churching of Women; if you first make your Offering to him for the same, for there

is

(24)

is no other Due, for Burying, Christening, Marrying, and Churching of Women, but an Offering; and if the Parson sue you for a Fee when you have made your Offering, you may sue him in a *Premunire*, as in *Hunn and Horsley's Case*, *Kelway's Reports*, pag. 118. Thus you may see how they stand.

The Breach of an Act of Parliament that is in force is punishable, for it is the breaking of the Laws, (and that Man that is aiding and assisting in raising of Money without Authority of Parliament, is guilty of a Misprision of Treason) and may be indicted in any of His Majesty's Courts for the same, by any Person whatsoever; therefore let all Men have a special Regard to what they are about, when they assume a Prerogative of raising Money by the Power of a Vestry; for if it was in the Power of one Man to Tax another, we should soon sink under the Burden of Imposts and Taxes, and who knows what they may do with the Money they raise; if it was in the Power of two or three to raise Money, they might put it in their Pockets, or perhaps apply it to worse Purposes, by raising a Rebellion, or maintaining a litigious Law-Suit, to keep the right Owner out of his Property, who is not able to stand in Competition with them; but to clear up this Head, and render the Subject-Matter unanswerable, there is an express Act of Parliament, that none shall raise Money but the Parliament alone, by the Statute of *Petition of Right*, 3 *Ch. I.* None shall be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without Consent,
by

(25)

by Act of Parliament: And upon Refusal so to do, shall not be called to make Answer, to take any Oath, not warranted by Law, give Attendance, or be confined, or otherwise molested concerning the same, nor for Refusal thereof, neither shall any free Man be imprisoned or detained without Cause shewed, *Stat. 3. Ch. I. ch. 1.*

And having shewed in what Respect they cannot raise Money, I now proceed to shew how far their Power reacheth to raise Money. The mending of the Highways is raised by Law, and not by the Power of a Vestry. The Poors Rate is out of the Power of the Vestry to raise, tho' they are bound to maintain them, for the Poors Rate is raised by Authority of Parliament, and not by the Power of a Vestry; the Vestry may take it under their Consideration what Sum of Money will suffice to maintain their Poor for two or three Months, or longer, tho' by Law, it should be raised weekly, but they cannot by their own Authority raise one Farthing without its being signed by two Justices at least, and one of them to be of the *Quorum*, as appears by *Stat. 43. Eliz. ch. 2.* The Vestry are authorized by a Statute of *George I.* to build a Work-house to keep the Poor in, for the better Conveniency of setting them to Work: There is other Money raised in all Parishes that has not the Sanction of the Legislature, (*viz.*) The Watch-Money; which is raised by the Constable, this is often done by Vestry, and there settled what every one shall pay, if he do not watch, and the Justices will send their Summons to the Constable

(26)

to return them that do not pay ; I had almost said this is an Imposition of the Justices upon the Constables, the Justices having no further Prerogative over the Constable, as touching the Watch, than as the Statute of *Winchester* directs in the fifth of *Hen. IV. cap. 3.* which peremptorily declares, That none but Cities and Towns corporate shall watch, and they only from *Ascension-Day* to *Michaelmas* ; and *Henry* having got the Crown from *Richard II.* got this Act made, that there should be Watch kept for fear they should be seized, for *Richard* who was a Prisoner in *Pomfret Castle* ; this was the Cause for what Watching was first instituted, and not for a Man to leave his own House to Watch about the Streets, neither can the Justices or Constable compel any Man to pay the Watch *nolens volens*, except *London* and *Westminster*, and other incorporated Places, as appears in the Case of *Atton* the Clock-Maker of *Gravel-Lane* in *Southwark, London*, who stood Trial with the Justices, and cast them at *Croydon* in *Surry* Assizes the 26th of *July 1733*, and had a Verdict against them for offering to make him pay the Watch. Thus have I endeavoured to shew with all Perspicuity and Brevity, what Money is raised by Authority of the Legislature, and what is raised contrary to Law ; I am now to consider in what respect a Vestry hath Power to raise Money, which are only these following, (*viz.*)

For the Repair of the Church, the Fences of the Church-yard, and Church-Ornaments ; for it is the positive Law of the Land, that each individual Parish shall maintain their Parish

I

(27)

rish Church, and keep up their Church-Ornaments, and the Money that is raised for the Repairs of the Church, the Fences of the Church-yard, or the Repairs of Books, Surplices, Bells, or any other of the Church-Ornaments, must be raised in manner following, (*viz.*)

The *Sunday* before the Church-Wardens design to make a Levy, they are to give publick Notice in the Parish Church, immediately after Divine Service, of the Time and Place designed for making the intended Levy, and then at the Time and Place appointed, the Church-Wardens and Parishioners there met are to consider what Sum of Money will be necessary to be raised, for such Repairs as shall be then needful ; and afterwards the Church-Wardens, or the major Part there present, are to proceed to make an equal Levy upon all the Land-holders, and Parishioners in the Parish ; *Coke's Reports, Vol. V. pag. 67.* But even this is not raised by their sole Power alone, but by the Statute of *Circumspecte Agatis*, that obligeth the Parishioners to maintain their Church ; so that upon the whole Matter there can be no Money legally raised, but by Authority of Parliament ; and all Money that is raised, for which there is no Act of Parliament, deserves no other Epithet than a felonious Imposition under the Pretence of Law, and is no better than Robbery ; Money raised for the Repairs of Bridges, County-Goals, and Money lost between Sun and Sun is lawful, and has the Parliament Assent to ratify it.

F 2

I now

(28)

I now come to the last Thing proposed, a Custom in most Parishes, and the Practice of most Church-Wardens, in laying out what Money they think fit, and obliging the Parishioners to repay them, so that there is often a great deal of Money raised, and little Work done; and if any Parishioner is inquisitive and desirous to know what is done with the Money, it is ten to one he is stigmatized with some opprobrious Names, and counted an ignorant and impertinent Blockhead; and they look upon it as a great Condescension in them, if they admit you to a Sight of the Bricklayers and Carpenters Bills, so that in Course all must be right then, as if a Receipt for Twenty Pounds was not as easily given as a Receipt for Ten Pounds; which it is to be feared is too common a Practice in Parishes, or there could never be so much Money raised every Year for so little Work done. I now come to shew that the Church-Wardens cannot proceed alone to the Repairs of the Church; for if they lay out any Money of their own accord, the Parishioners may refuse to repay them, altho' they have had Notice from the Visitors in their Visitation to repair the Church, but must compel the Parishioners to do it by Ecclesiastical Censures, *Hetley's Reports, pag. 61.* Thus I have given a short Specimen how the Church Rates must be raised, and that the Church-Wardens cannot proceed alone, and by Virtue of their own Authority. I shall conclude this Head with shewing that all Money spent at Vestry Meetings by Parish Officers, is unjust and illegal; for perhaps there shall half a Dozen who pretend

(29)

tend to negotiate the Parish Affairs, and shall meet only to regale themselves at the Parish Expence. Having shewn the Power of a Vestry in raising Money, I come now to consider the Sacredness of the Church and Church-yard, that it should not be profaned, for if Murder or Adultery be committed in the Church or Church-yard, or the Church new built, it must be reconsecrated. I must confess, I have heard of a Church rebuilt, and not consecrated. The Church and Church-yard are held so sacred, that if one Man strikes another, or shall draw any Weapon in the Church or Church-yard, with an Intent to strike, shall have one of his Ears cut off, but if he hath no Ears, then to be marked in the Cheek with a hot Iron, with the Letter F, and be excommunicated by *Stat. 5. Edw. VI. cap. 4.* I have already shewn the Design of Bells, except that antient and commendable Use of the Bell, called *Corfeu Bell*, which began in the Time of *William the Conqueror*, and is constantly rung from *Michaelmas* to *Lady-Day*, in several Country Towns in this Kingdom at Eight a-Clock at Night, as a Guide to Travellers, who were benighted, which by the Sound of the Bell have been led to Quarters of Refreshment, who for want thereof had been exposed to the Hardships of the Weather all Night, upon Moors and Commons to the Hazard of their Lives: This *Corfeu* served also for an Instruction to the Town's People, who when the Bell began to ring, put out their Fire, in order to go to Prayers with their Families, before they went to Bed; and this Custom is retained in several Towns to this Day,

(30)

Day, particularly at *Colehill*, in *Warwickshire*, nigh unto *Blyth-ball*, the Seat of that elaborate and painful Antiquary Sir *William Dugdale*, to whom the Church is so much beholden, for setting forth what Lands are discharged from Tythes, and what not; and where they lay in all Parts in *England*, and the Dominion of *Wales*.

1. I now come in the second Part of this Treatise to shew the Duty of the People to their Minister, and the indispensable Obligation they lie under to make their Offering to him, the manner of performing their Offering, and for what.

2. I shall likewise shew what is incumbent in the Discharge of the Minister's Function towards the People, and wherein it is presumed there may be a Deficiency, (not that I pretend to prescribe Rules to my Guides and Directors, that would be looked upon to correct the *Magnificat*) but my Design is only to direct the meaner Sort, how far they may insist upon their Privileges, when attempted to be incroached upon, or invaded.

3. I shall set forth the Obligation of Church-Wardens, and what they are bound to perform in the Discharge and Execution of their Office, by virtue of the solemn Oath they have taken, and not to flatter themselves (as it is to be feared) too many have done, that they have discharged their Duty, and their Consciences, by drawing up a stated Form of the Parish, *All is well*, and presenting it at the Visitation, when perhaps at the same Time, upon Enquiry,

(31)

Enquiry, the most material Articles are concealed, if not buried in Oblivion.

In the first Place, I am to shew the Duty of the People to their Minister, and how and in what manner they are to make their Offering to him. The Peoples Duty to the Minister is at all Times to honour him as God's Vicegerent, commissioned by the Almighty to take Care of their Souls, and therefore are strictly forbidden to withhold their Tythes from him, and Tradsmen obliged to make their Offerings to him at *Easter*, for their personal Tythes; and if they have any Office of the Church performed for them, they must make their Offering according to their Ability; for all Persons are bound to make an Offering, if they have any Office performed for them, as appears by the most profound Gentlemen of the Long Robe, to be the Law of *England*; Sir *Simon Degge* in his *Parson's Counsellor*, says, That upon the whole Matter it appears, there were some Offerings free and voluntary, which the Parishioners and others were not bound to perform, but at Liberty; there were others by Custom, certain and obligatory, as those for Marriages, Christenings, Churching of Women, and Burials, pag. 344; and again, he says, these Offerings which were free and voluntary are now vanished, and are not comprehended within this Law; but those that were customary and certain, as for Communicants, Marriages, Christenings, Churching of Women, and Burials, are confirmed to the Parish-Priest, Vicars, and Curates, pag. 345.

In

(32)

In the Clergyman's *Vade Mecum*, it is thus expressed, Offerings are occasional upon Churching, Marrying, and Burials, pag. 258. Having shewn that Offerings are lawfully taken, and that the Minister may take whatever is given to him as an Offering, be it more or less, and must be content with what is offered him. I shall now proceed to shew the manner of making their Offering, when they have any Office of the Church performed for them; if it is for Marrying, they are bound to make their Offering then present to the Minister, and the same likewise for Churching, or for the receiving of the Communion, and for Christenings; as touching the Burial of the Dead, and to prevent exorbitant Fees and Impositions; I have collected the following Rules as a sure Guide in an erring Age; and, if possible, to prevent for the future, all illegal Exactions and Impositions demanded by the subordinate Officers of the Church, which has given great Umbrage to Persons of all Denominations, and in particular to the Dissenters from our present happy Establishment, who have presumed to traduce the whole Hierarchy; for Faults committed by some of the mercenary Under-Graduates of the Church, who are only answerable for the same, and the Church in no ways to be blamed; on account of some treacherous back-sliding Members of it; therefore when you have any Corps to bury, go or send to the Minister of the Parish, (not to his Curate) and give him notice what Day, and what Time of the Day or Evening you will come with your Corps to the Church, (for if you are desirous to

(33)

to carry them in the Church, you may if you please) for the Rubrick of the Church says, The Minister shall meet the Corps at the Church Porch, (see the Rubrick concerning the Burial of the Dead) which plainly implies, the Corps may be carried into the Church, for what shall they do at the Church Porch, if they did not go into the Church, and when you have buried your Corps, make your Offering to the Parson that performeth the Office, whether it is the Minister or not; but if the Minister is a Non-Resident; (as it is to be feared there are too many such) then go to his Curate, and give him timely notice of the Day, and Time you will bury the Corps, for were you to give the Clerk or Sexton notice, and not the Minister, you might then perhaps not have your Dead buried at all, and the Minister might urge it as a Plea in Excuse, that he was not acquainted with the Matter, and so guard himself within the Law; but when you have given a previous notice, if he be in your Parish, (for all Parishes are alike) then he can have no Pretence to excuse himself; and if he be a Non-Resident, or out of Town, then give his Curate the same notice, then there can be no room for Evasion, but lay themselves open to the Law, if they refuse to bury the Dead; as for the Grave, you may dig it in what Part of the Church-yard you please, provided you disturb no other Corps. I must confess there is an Order of Vestry in some Places, that would give us to understand, that one Part of the Church-yard is three times as dear as another; in several Places. But I hope I have sufficiently proved already that the Church-

G
yard

(34)

yard is not to be sold, to keep the Rich and the Poor asunder, as if there were a Difference in their Dust; I would gladly be resolved, upon what account this Distinction is made; sure it is not in respect of our Birth, for we have all *Adam* for our Father on Earth, and God in Heaven; and we are altogether commanded to say, *Our Father which art in Heaven*; not in respect of our Souls, for the Price of our Redemption is all alike; not in respect of our Bodies, for the Prince is made of no better Dust than the Peasant, nor the Bishop then the Sexton; not in respect of the Understanding, for many Servants know more than their Masters. But to return to the Grave, at which Place, if you do not make your Offering, take Care when you do, that you make it to the Minister that performed the Office, or the Minister of the Parish, and not to the Clerk or Sexton, that the Minister may have no Occasion to say he knew nothing of the Matter, and by such false Steps, and irregular Proceedings, bring yourself into Trouble, for not making your Offering as you ought, and as becometh you to do to your Minister.

I have already shewn that there is no Certainty in an Offering, but at your own Option, for the Widow that put in two Mites, it was as much from her, or more, than those that cast a great deal into the Treasury out of their Abundance. Having thus far set forth the Duty of the People to their Minister, and the indispensable Obligation they lie under to make their Offering to him; the manner of performing their Offering, and for what. I come in the second Place to consider, wherein it is incumbent on the

(35)

the Minister, in the Discharge of his Function towards the People; and when he may be suspected to be supine and negligent therein, *Padro Paulo* in his History of the Council of *Trent*, as I find it, in the *English* Translation, observes, That in the first Seven Hundred Years after Christ, there was not such a Thing in the Western Church, that any Man should have an Office or Title in the Church, and not do the Duty, *pag. 217*. And the greatest Part of the Prelates there in that Council, held that Residence was *Jure Divino*, *pag. 486*. What shall we say then to those who leave the Care of the Souls of their Parishioners to an Hireling, and that for six Months together, and sometimes longer. *Sir Simon Degg* in his *Parson's Counsellor*, observes, That the Commons of *England* often complained against Pluralities, and Non-Residence; and in the Parliament held the second *Hen. IV.* The Commons prayed that all such as procured from *Rome* (for in those Days they came from *Rome*) any Bulls for Pluralities and Non-Residence, should incur the Pain of *Provisos*, *pag. 76*. And in a Parliament held the 8th of *Hen. IV.* The Commons petitioned that the King might have a Moiety of the Profits of all Benefices, where the Incumbent was Non-Resident, *pag. 76*. The like was prayed in the Parliament of the 9th of *Henry IV.* In the Parliament of 4th *Hen. VI.* it was prayed by the Commons, That all Parsons, Vicars, and others having Cures, and not being Resident thereupon, should forfeit their Benefices, the one half to the King, and the other to the Patron, *pag. 76*. And in the Parliament the said Year, the Com-

mons prayed that for Non-Residence of the Incumbent, the Patron might present a new Clerk, and great Reason in my Judgment, pag. 77. There is an Act against Non-Residence, and is thus expressed, That as well every Spiritual Person then being promoted to any Arch-Deaconry, Deanry or Dignity, in any Monastery or Cathedral, or other Church, Conventicle, or Collegiate, or being beneficed with any Parsonage or Vicarage, as all and every Spiritual Person, which then after shall be promoted to any of the said Dignities or Benefices, with any Parsonage or Vicarage from the Feast of St Michael then next following, should be personal Resident, and abiding in or at upon the said Dignity, Prebend, or Benefice, or one of them at least; and that if any such Person wilfully absented themselves from the said Benefice, &c. by the Space of a Month at one Time, or two Months at several Times in one Year, to be accounted at several Times, that such Person so absenting himself, should forfeit Ten Pound for every such Default, the one half to the King, and the other half to the Informer, to be recovered as the Act expresses; that if any Person should procure any Dispensation from Rome, or elsewhere, to be Non-Residents, the Party guilty should forfeit Twenty Pound, by Stat. 21. Hen. VIII. cap. 13.

The Observations of Sir Simon Degg upon this Statute are, (viz.) By this and other Statutes mentioned in this Book, it is evident that the Parliament of England, even when the Pope was in full Power, often made bold with his Holiness to correct his and his Courts Corruption. This

This was certainly an excellent Law, if there had been no more in it, but the dispensing with such Persons, as by the same Law are qualified for two Livings, and the Persons capable to qualify Chaplains to have Pluralities, had not grown so numerous, insomuch that there are but few of the best Livings, but what are held by Plurality, and they either under Pretence of attending their Lords, their Deaneries, and Prebends, find an Excuse to be Non-Resident, which has made this Law of little Effect, nay, I wish I could not say, that we are now in a worse Condition than before the making of this Act, for Dispensations (as all other Things from Rome) were chargeable and costly, as being far fetched, and coming slowly; that I presume there is ten Dispensations for Pluralities now, for one then; and few of these dispensed with were Non-Residents upon both Livings as now they be; two great Parishes in many Places being left to the Care of two Boys that came the other Day from School, perhaps fitter to be there still, whilst the Shepherd that takes the Fleece feasts it out in his Lord's Family, or takes his Ease upon a Prebend or Deanry, pag. 78 and 79. how near such Practices may be said to come up to that old Proverb of kindling a Torch at Jupiter's Altar, and robbing the Church by the Light of it, I leave the reader to judge. A Bishop may be compelled hereunto by ecclesiastical Censures by their Superiors, and the King may compel them by seizing their Temporalities, a notable President whereof we have in the Time of Hen. III. when Popery was at the highest, and the King was not look-
ed

ed upon as Head of the Church, yet that King sent his Writ Mandatory to the Bishop of *Hereford* to be Attendant upon his Bishoprick, otherwise he would seize of all his Temporalities, *Parson's Counsellor*, pag. 82. and the 41 Canon, *James I.* forbids Non-Residents. This good Law principally aimed at three Ends or Effects, (*viz.*) That every Clergyman might attend his Duty, in reading the publick Prayers of the Church, administering the Sacraments, Preaching, inspecting the Behaviour of his Flock, and performing all sacred and divine Offices, like a good and faithful Shepherd; and I do wonder with what Conscience any Clergyman can expect his Dues from his Parishioners, that does not perform his Duty in the first Place. The second End of this good Law is to avoid Dilapidations in the Buildings belonging to their Livings, for you shall seldom see a Non-Resident, but he is also a Dilapidator; and it is no wonder that he that neglects the Flock lets the Sheepfold go to ruin. The third End of this good Law was to maintain Hospitality, and I would wish every Clergyman to remember that the Poor have a Share in the Tythes with him, *Parson's Counsellor*, pag. 79. and by *Stat. 15. Rich. II. cap. 6.* and *4 Hen. IV. cap. 12.* And by a Canon of our own made in the Time of King *Alfred*, it is decreed, That the Tythes should be divided into three Parts, being first delivered to the Priest, one Part to the Repairs of the Church, another to the Poor, and a third to himself, by all which it appears that originally the Poor had a Share in the Tythes, which plainly implies the Clergy were to keep Hospitality,

tality, and to be Resident, and not wilfully absent themselves, for till the 43d of *Elizabeth*, the Poor were solely under their Care, all must be Residents, except those that are imprisoned without Fraud, or Removal without Fraud, for Health, or not having a House upon his Glebe, *Coke's Reports*, Vol. 6. pag. 21. And those accepted that are qualified by *Stat. 9. Edw. II. cap. 8.* and *21. Hen. VIII. cap. 13. 25. Hen. VIII. cap. 16. 33. Hen. VIII. cap. 28.* And it is highly reasonable, that all should be Residents upon their Livings, for they have the Care of Soul and Body to, and are obliged to visit the Poor and Rich alike; and if their Living will afford it, they should help the Poor, when sick, and in want; and one of the chief Reasons in the *Romish* Church why the Priests are not allowed to marry, is, they should have no other Family but the Poor; for in all Parts of the World, but our own Nation, there is no Provision for the Poor, but all under the Care of the Priest; and if they have a Family of their own, there will be little Care of the Poor taken, it is to be feared. But the chief Reason why they should be resident upon their Living, is, to take Care of the Souls of those committed to their Care, to advise those of mature Years to live as becomes the Gospel of Christ, and they are to instruct all the Youth in their Parish, in order to ingraft the Principles of Christianity in them, and are bound by the Canon Law to catechize every *Sunday*; the Canon runs thus: Every Parson, Vicar, or Curate, upon every *Sunday* and Holy-Day before Evening Prayer, shall for half an Hour
or

(40)

or more examine and instruct the youth and ignorant Persons of his Parish in the Ten Commandments, the Articles of Belief, and the Lord's Prayer, and shall diligently hear, instruct and teach them the Catechism, set forth in the Book of Common Prayer, and all Fathers, Mothers, Masters, and Mistresses, shall cause their Children, Servants, and Apprentices, which have not learned the Catechism, to come to Church at the Time appointed, obediently to hear, and be ordered by the Minister, until they have learned the same; and if any Minister neglect his Duty herein, let him be sharply reprov'd upon the first Complaint, and true Notice thereof given to the Bishop or Ordinary of the Place. If after submitting himself, he shall willingly offend therein again, let him be suspended, if so a third Time, there being little hope he will be therein reformed, then excommunicated, and to remain until he be reformed; and likewise if any of the said Fathers, Mothers, Masters, or Mistresses, Children, Servants, or Apprentices, shall neglect their Duties, as the one Sort in not causing them to come, and the other in refusing to learn as aforesaid, let them be suspended by their Ordinaries, (if they be not Children) and if they so persist by the Space of a Month, let them be excommunicated, Canon 59. With all Reverence to that sacred Order, I fear there are too many Parishes slighted, and too little Care taken to instruct the youth and ignorant; for tho' it is the indispensable Duty of every Minister so to do, those that are ignorant may be ignorant still, for the Care that is taken by many to instruct them.

But

(41)

But I am persuaded, those that are lost through Ignorance, the Minister is answerable to God for them, where he takes no Care to instruct them: the Custom is of late Years only to catechise in *Lent*, as if it were sufficient that we ask for our daily Bread only in *Lent*, as to catechise only in *Lent*; nay, some are so far from instructing the Ignorant, when they do catechise, that if they are at a Loss in the Responses, they will bid another go on, and let him or her remain in their Ignorance, so that they must all be ready instructed and taught to their Hands; by all which it appears that the Catechumen has nothing but the Form, without the Substance of catechising; there is another culpable and too common a Practice, that is, the shortening or curtailing of Divine Service, particularly at the Burial of the Dead, where oftentimes one half of the Service of the Church is left out, especially at the Burial of the poorer Sort. Bishop *Sprat* in his Charge to his Clergy, says, Only in the Office of visiting the Sick, you are more left to your own Liberty, Clergyman's *Vade Mecum*, pag. 14 and 15. Pray how would any one like to have Divine Service begun at the Second Lesson, and leave the rest out, would not the Congregation think the Minister was in haste to be gone. I could heartily wish all Clergymen to remember, that they have subscribed to the Rubrick, Canons, and Articles; therefore he that shorteneth any Part of the Office of the Church, is false to his Promise and Subscription, and liable to the Censure of the Ordinary, Clergyman's *Vade Mecum*, pag. 14.

H

Thus

(42)

Thus having shewn in what respect the Minister may be said to have neglected and slighted the Commonality. I come now to my last Proposition, (*viz.*) To shew what the Church-Wardens are obliged by Oath to perform in their Parish. I shall only mention one or two wherein the Parishioners are principally concerned. The Church-Wardens are bound by Oath to take Care that the Parsonage-House be kept in good Repair, notwithstanding it is often found not fit for the Minister to live in, but let the Parsonage-House lie in never so miserable a Condition, it is connived and winked at, and presented to be very well and in good Order at the Visitation, without any regard to the Tenor of their Oath; they cannot plead Ignorance, since it is Part of the Minister's Duty to inform, instruct, and advise them in that Affair; as for presenting of People for Irregularities, they are not so much to blame, as some have insinuated, since they fulfil the Contents of their Oath in that Article, which obligeth them so to do; see Canon 26. But what they are too commonly negligent in, is, they do not look into the Register, and keep it under their Care and Charge, as they are by Oath bound to do; see the Canon concerning Registring, which runs thus, (*viz.*) In every Parish-Church and Chapel within this Realm, shall be provided one Parchment-Book at the Charge of the Parish, wherein shall be written the Day and Year of every Christening, Wedding, and Burial, which have been in that Parish, since the Time the Law
was

(43)

was made in that Behalf, so far as the ancient Book thereof, in that behalf can be procured, but especially since the beginning of the Reign of the late Queen; and for the Safe keeping the said Book, the Church-Wardens, at the Charge of the Parish, shall provide one sure Coffer, with three Locks and three Keys, whereof the one to remain with the Minister, and the other two with the Church-Wardens, severally, so that neither the Minister, without the Church-Wardens, nor the Church-Wardens without the Minister, shall at any Time take that Book out of the said Coffer; and henceforth upon every Sabbath-Day, immediately after Morning or Evening Prayer, the Minister and Church-Wardens shall take the said Parchment-Book out of the said Coffer, and the Minister in Presence of the said Church-Wardens, shall write and record in the said Book, the Names of all Persons christened, together with the Names and Surnames of the Parents; as also the Names of all Persons married and buried in that Parish in the Week before, and the Day and Year of every such Christening, Marriage, and Burial; and that done they shall lay up the Book in the Coffer as before, and the Minister and Church-Wardens unto every Page of that Book, when it shall be filled with such Inscriptions, shall subscribe their Names, and the Church-Wardens shall once every Year, within one Month, after the five and twentieth Day of *March*, transmit unto the Bishop of the Diocese, or his Chancellor, a true Copy of the Names of all Per-
sons

(44)

sons Christened, Married, or Buried, in their Parish the Year before, (ending the said five and twentieth Day of *March*) and the certain Days and Months in which every such Christening, Marriage, and Burial was had, to be subscribed with the Hands of the said Minister and Church-Wardens, to the end the same may faithfully be preserved in the Register of the said Bishop, which Certificate shall be received without Fee; and if the Minister or Church-Wardens shall be negligent in Performance of any Thing herein contained, it shall be lawful for the Bishop, or his Chancellor, to convene them, and proceed against every of them as Contemnors of this our Constitution. Perhaps it may be urged, I have made too severe a Scrutiny into the Office of the Church-Wardens, in charging them with neglect of their Duty (to say no worse) in not taking the Register into their Custody and Keeping. I do assure the Reader, it is not out of the least disrespect to the Office, or any personal Prejudice, but on account of the many Complaints of great Inconveniencies which often ariseth by the Clerk's having the Register in his keeping, for it is not the Clerk's Business to register, and to have it in his Custody; but it may be objected, that all Persons may have Recourse to him to search at Will and Pleasure; whereas if it was locked up in a Chest, any Person that wanted to see it could not have Access to it at all Times. To which I answer, That a Sight of the Register may be as easily procured from the Church-Wardens as from the Hands of the Clerk. And I dare

(45)

dare venture to say, There is less Danger of its being lost, for the Clerk may run away with the Register-Book, an Example whereof may be proved against one *Philips* late Clerk of *Lambeth*, in *Surry*, whereby the Parish became great Sufferers for Want of their Register; and in such a Case no Person that is fifty Years old, and born in the Parish, can then have a Transcript of the Register to prove themselves Heir to an Estate; and in *Battersea* the next adjacent Parish, their late Clerk had been often found tardy, and detected in registering Boys for Girls, and Girls for Boys, and not one half of the Register-Book in his Time was correct and authentick, as it ought to be. Therefore, I appeal to the Reader, or any unprejudiced Person, whether Church-Wardens, as well in Justice to the Parish, as by the Tenor of their Oath, are not bound to prevent the ill Consequences that may arise from such Proceedings and Practices, when it is wholly in their Power so to do; many more Instances might be given of Parishes that suffered by Miscarriages of the like Nature. But, I hope, I have said enough to any Person that considers the Validity of an Oath, and makes Conscience of it in the Discharge of his Office; and that it will appear to every candid and impartial Reader, that I have a great Veneration for the Clergy, particularly the Hierarchy of the Church of *England*, as by Law established, altho' I am an unworthy Member thereof, notwithstanding which I cannot but regret the many Hardships (daily complained of) and Sufferings several poor Families

(46)

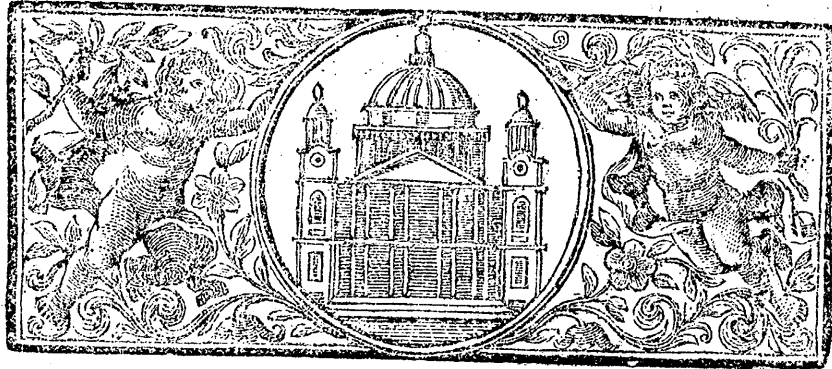
milies have undergone by some of the subordinate Officers of the Church; and too often it is to be feared by the Connivance of their Masters, whose Displeasure, I choose rather to run the Hazard of, than to see my Countrymen, Neighbours, and Fellow-Subjects imposed upon, and shamefully oppressed under the specious Pretence of just and legal Dues, (when they have no Right or lawful Authority to demand them) and many Times proportion them, according to their Affections and Inclinations, which plainly implies they have no real Standard-Law to frame their Pretensions by, notwithstanding their Bugbear-Threats of a Citation in *Doctors Commons*, according to their Table of Fees; but any unbiaffed Person may easily discern their Prejudice against me, proceeds from my having confronted their Measures, and because I seem to complain of their illegal Practices; but as it is impossible to please every one, I have not been sollicitous to do it, yet, according to my poor Ability, I have laboured to undeceive some, who have taken for granted, all Vestry Determinations and Parochial Imposts are lawful, and to shew wherein they have been mistaken, and to shew how far their Property and Privileges have been thereby invaded; and, I hope, many will find some Use and Benefit by this Abridgment and Abstract, and kindly accept of my Endeavours, tho' it is not set out in an elegant Dress, but with as much plainness and brevity as I could, and as I shall always prefer the Interest of the Publick to my own, I shall think myself over and
above

(47)

above recompensed for my Pains, if the Reader may draw some Use from what is already written, which if it does, it may perhaps encourage me to venture again in a larger Treatise, in the mean Time, I beg a gentle Censure for the Faults I may have overlooked, (through Want of Time, and hurry in my daily Vocation) which will abundantly satisfy him who is ready to answer for this Undertaking, and maugre all the Opposition of Enemies.



P O S T



P O S T S C R I P T .

SINCE my first setting out, in order to perform the Task I had promised, there are some remarkable Passages I find dispersed among the divers Authors I have peeped into, touching burying in Churches, (which at my first putting Pen to Paper, I had no Thoughts to have concerned myself with) but being thought in many Circumstances of some Use to the Publick, I was importuned to publish the same by Way of Appendix or Postscript, to let People know how far we have deviated from the Days of old; when the Churches were esteemed so sacred, that none were allowed to be buried in them; for the Archbishops of *Canterbury* were not permitted a Burying-place in that Cathedral, till *Cuthbert* Archbishop of that

that See obtained Licence from the King, that the Archbishops might be buried in the Cathedral Church at *Canterbury*, *Parson's Counsellor*, pag. 175. If a Man is qualified to have a Seat in such an Isle or Quire in the Church, as being possessed of an ancient Messuage, he may prescribe to that Messuage, to have the sole Burial in such Isle, Quire, or Place in the Church, *Cook's Entries*, pag. 8. It is as much Simony to sell the Ground of the Church, as it is to sell the Ground of the Church-yard, for the Money that is paid for breaking up the Soil of the Church, is only for breaking the Floor, *Parson's Counsellor*, pag. 176. And any Body may be buried in any common Part of the Church or Chancel, paying the accustomed Fee to the Parson for breaking up the Soil, which for the most part is three Shillings and four pence in the Church, and six Shillings and eight pence in the Chancel, *Parson's Counsellor*, pag. 176. But the common Practice is, besides the paying for the Ground in most Places, you shall pay three or four Times double the Fees (as they call them) for performing the Office of the Church, in burying the Dead in the Church as in the Church-yard, although it is no more than an Offering in the Church than it is in the Church-yard; but let the Church be for the Living, and the Church-yard for the Dead; add to this the great Abuse there is committed touching the Seats in the Church, I shall lay it down as I find it in unquestionable Authors, (*viz.*) The Church-Wardens with the Approbation of the Rector can dispose of

I

the

the common Seats built at the Charge of the Parish, and place the Parishioners therein, according to their Degree and Quality, *Parson's Counsellor*, pag. 172, 173. Those that stand possessed of a Messuage in Fee-Simple, or Messuages; and the more a Man is possessed of in the Parish, the higher his Seat must be; but it is not to the Man, but to the Lands as the Seats are due, in Consideration that the Lands are chargeable to the Repairs of the Church, and the Maintenance of the Minister, and the Poor, and all other Parish Charges; these of Right have a Seat, or a whole Seat, according to their Possession of Lands in the Parish, so are their Seats in the Church, without being placed by the Bishop, Ordinary, or Church-Warden, those that are placed by the Church-Wardens, or any other Person, must be in Consideration of what they pay to the Repairs of the Church, and the Minister's Maintenance, and all other Parish Charges; and the Bishop cannot grant a Licence to a Man to have a Seat, but in Consideration of his Lands; *Roll's Reports*, Vol. II. pag. 288. Neither can the Bishop place any Body in the Seats that belong to Houses; *Parson's Law*, pag. 113. And in *Effington's Case of Wanfworth* in 1718, it was in Consideration of his Lands, that the Bishop granted him a Faculty for a Seat in the Church, and Sir *Simon Degge* saith, that the Law is now settled in this Case, that a Man that is Owner of an ancient Messuage might prescribe for a Seat in any Part of the Parish Church; within which Parish such Messuage stands, *Parson's Counsellor*,

Counsellor, pag. 174; and this was settled by the Judges of the King's Bench, and afterwards affirmed in a Writ of Error in the Exchequer-Chamber, *Syderfin's Reports*, pag. 88, 89. But there is a strange Practice in the Church at this Time in some Places, where the Church-Wardens will sell a Man a Seat in the Church for his Life, (a very pretty piece of Simony) and in other Places let them out by the Year, and as the Church is sold at this Rate to the best Bidder, it is to be feared that such Mercenaries would sell their Saviour, if upon Earth, for Money; and I leave the Reader to judge of the Heinousness of this Crime in so doing.

As I have in some Measure already shewn the unconscionable Impositions of too many of the Clergy, Church-Wardens, and Parish Clerks; I think it absolutely necessary to let the Reader know how obnoxious such arbitrary and illegal Proceedings are in the Eye of the Law; for it cannot but affect every honest Man to see his poor Neighbour labouring under narrow Circumstances to maintain a large Family, wrecked and harrassed by a gang of Mercenaries; for here perhaps is a poor Widow left with four or five Children, and not Bread sometimes to eat; and a Man struggling under the same Circumstances, that has made away with the greatest Part of his Effects for Sustenance, nevertheless these Officers must have their Fees, (as they call them) if you are obliged to sell the Bed from under you, and go a begging from Door to Door, as too many have by their Oppression been forced to do, for the last Shift is

(52)

to go to the Church-Wardens, and beg and pray for the Ground, of them, to bury a Corps; after that you must make your Application to the Minister and Clerk, and beg their Fees, though there is none due, as I could ever find; and after all this Trouble of begging and praying, and laying out your calamitous Circumstances before them, you may perhaps at last (after waiting their Leisure) obtain Leave to bury your Dead, although the Funeral Service is generally curtailed and galloped over them, as if the Soul of the deceased was of less Value, because he died poor; but if you are determined to protest against such irregular and undue Proceedings, you must take Care to make your Offering to the Minister, that is, you must give him somewhat for performing of the Office, if it is but a Penny, it is an Offering, and will indemnify you; for was he to sue you afterwards for his Fee (as they call it) he is punishable by the Statute of 25 of *Edw. III.* which was confirmed by the 13 of *Rich. II. chap. 2, 3.* The Penalty of this Act is, They forfeit all their Lands, Livings, Goods, and Chattels, and suffer perpetual Imprisonment, or you may have a *Mandamus* from the King's Bench to make them shew Cause, why they demand the Money, and there they must be obliged to shew by what Law they demand the Money; but as for the Clerk, he has neither Offering nor Fees of any kind whatsoever due, and you may have a *Mandamus* against the Church-Wardens for their Demands, either for the Use of the Bell, or any Thing else belonging to

(53)

to the Church; but as for the Ground of the Church-yard, you must bring your *Mandamus* against the Minister for selling or suffering it to be sold, for it is his, or you may indict him for Simony either in the Ecclesiastical Court or at Common Law for the same; and if you prove a Minister guilty of Simony, you may deprive him of his Living. Thus I have explained to you, as concisely as I could, the Heinousness of the Crime, and the Means to prevent it for the Time to come, that neither you nor your Posterity may be any longer deluded under the specious Pretences of a Parochial Table of Fees, that never had the Sanction of the Legislature, but were hatched in a Vestry to impose on the Poor for the Benefit of good Living in a Tavern.

F I N I S.



