CHANCEL REPAIR LIABILITY

The transcript of a lecture given by Derek Wellman, Registrar of the Diocese of Lincoln, to the Ecclesiastical Law Association on Saturday 8th April 2000.

Now this is undoubtedly an interesting topic, not only to Diocesan Registrars, but also to conveyancers in general. As we shall see, there are a number of ways in which the liability can arise and while I do not know what is the experience of other registrars, I receive fairly frequent enquiries from Solicitors acting for purchasers, usually of land in rural areas, as to whether the land is affected by the liability, which could of course have considerable financial implications for the land owner.

From the conveyancing point of view, the difficulty is that there is no system of registration of the liability as there is in the case of other charges on land and while it is possible to make certain enquiries, these may or may not provide a definitive answer as to whether any given piece of land carries the liability; the problem for the landowner is that he will be stuck with the liability whether or not he had notice of it at the time of his purchase. This situation has been recognised as unsatisfactory and in 1983 the Law Commission produced a Working Paper which recommended that the liability be phased out over a period of 20 years. I believe that this was debated in the General Synod, but in the event nothing happened and so for the time being at least the situation continues as before.

Looking at it from the Church's point of view, the continuing existence of the liability can of course be a very valuable asset to a PCC - especially if major works need to be carried out to a chancel and funds, as is often the case, are limited. That is not however to say that every parish church is able to claim this benefit. As we shall see, historically the liability is very largely associated with the ownership of tithes, and the tithe system was never extended to the very large number of new parishes established in relatively modern times by the subdivision of ancient parishes. The repair right may be enjoyed by a mediaeval church, but it will not be attached to a Victorian building which is the parish church of a parish created in the 19th century; accordingly, the repairing obligations are more likely to exist in rural than in urban areas.

We shall also see that in other cases the liability for repairing the chancel has been transferred to the PCC by virtue of statutory provisions. It is not known exactly how many churches are still able to look to third party landowners for contributions towards the cost of chancel repairs, but apparently research carried out by the Church Commissioners shortly before the publishing of the Working Paper by the Law Commission in 1983 indicated that, at that time, the total number was probably somewhere between 4,000 and 6,000, which broadly speaking was about one third of all parish churches as then existing.

Now in order to understand how chancel repair liability arises and how in those cases where it does arise it has devolved upon the particular people upon whom it now falls, it is helpful, if not necessary, to have a look at a bit of history and indeed to go right back to the beginnings of the parochial system in this country. Chancel repair liability has existed at common law from "the time whereof the memory of man runneth not to the contrary", that is to say from before the accession of King Richard I in 1189. When the parochial system was getting established, what would happen would be that the local landowner would build the

church and provide the land for the churchyard and he would also provide what we would now call the parsonage house and glebe by way of endowment for the parson or rector, and having done all that he would of course also reserve to himself the right to appoint the parson or rector and thus the system of patronage came into being at the same time. So every parish had its rector whose principal sources of income were the glebe, to which I have already referred, and the tithes, the scripturally based payment of one tenth of the produce of or from the land in the parish.

Now just pausing there for a moment, the matter of tithes is something which could easily be the subject matter of a separate talk, and I do not want to get involved in too much detail about it. Originally the tithes were paid to the rector in kind in the form of crops, livestock or dairy products, though over a period of time in many parishes by local custom the tithes became commuted into monetary payments. The tithes were not incidentally intended to be entirely for the personal benefit of the rector. As well as providing for himself, the idea was that he would use some of the tithes for the support of the poorer parishioners. The tithes system became hugely unpopular and led to much disagreement, and indeed ill feeling, between rectors and parishioners. As the song went, "We've cheated the parson, we'll cheat him again, for why should a blockhead have one in ten". We shall see that in many cases the right to receive tithes eventually passed out of the hands of the church altogether and they became increasingly to be regarded as a nuisance. Accordingly, from the later years of the 17th century onwards steps were taken, at intervals, to eliminate tithes, though, perhaps surprisingly, it was only with the Tithe Act 1936 that this process was finally completed.

So for his support and livelihood the rector had the glebe and the tithes which together constituted the rectorial property. However, provision also had to be made for the maintenance of the parish church, and the general custom in England was that the rector was liable to maintain the chancel at the east end of the church, while the parishioners were responsible for what lay to the west of the chancel, that being the part of the church in which they sat. This general rule was in some cases varied by local custom whereby the parishioners were responsible for the whole of the church. However, in the vast majority of cases responsibility for the chancel rested with the rector and he discharged that responsibility out of the profits of his rectory, that is to say out of the income arising from his rectorial property, namely the glebe and the tithes. Or to put it another way, the responsibility for maintaining the chancel was, as it were, a charge on the rectorial property, to be discharged by the possessor for the time being of the rectory and the property which went with it - which at this very early period meant the local parson.

Now as you know, the mediaeval period, the 13th, 14th and 15th centuries, saw the rise of the religious houses, the monasteries. In those days, unlike today, advowsons (or rights of presentation) had a value in direct proportion to the value of their related rectories and transfers by way of sale were not uncommon. During the three centuries to which I have referred, many, though by no means all, advowsons were acquired from lay patrons by religious houses, acting no doubt on sound advice given to them by the lawyers of the day. The point was that advowsons could be exercised in favour of ecclesiastical persons only, but monasteries qualified notwithstanding their corporate nature. So having acquired an advowson, all that the monastery had to do was to wait until the associated living fell vacant and then in effect present itself to it thereby appropriating the rectory and its property to itself. It thus acquired the glebe and tithes appertaining to the rectory and, as it was a corporate body, which because of its nature would never vacate the living, it had in effect acquired them permanently. Having made itself rector, the monastery became responsible for the cure of souls in the parish and it fulfilled that obligation by appointing a deputy, and thus "vicars" first appeared on the parochial scene. The monastery provided for the vicar by allotting to him a portion of the glebe and some of the (less valuable) tithes. A further

consequence for the monastery was that by virtue of its ownership of the rectorial property, and in particular the tithes, it became liable for repairing the chancel of the church in question.

So all in all a very happy arrangement for the monasteries. They acquired many rectories and the property which went with them, and even after providing for their vicars and chancel repairs they were doing very nicely thank you. However, in fairness, one has to say that they were not interested only in feathering their own nests. They used part of their wealth for the general support of people and, in particular, the relief of the poor within their immediate areas. But in general terms the monasteries grew rich and powerful. They flourished and prospered.

However, all good things must come to an end, and so they did for the monasteries, because of a King who was strapped for cash, possibly because of having had a succession of wives, but perhaps more likely because of an apparently irresistible urge to wage war against the French. Henry VIII dissolved the monasteries (and certain other institutions) and their former property, including the rectories which they had owned, was appropriated to the Crown and then dispersed in various directions. Wherever rectorial property went, the attendant chancel repair liability went with it; if the property of any individual rectory was distributed between more than one new owners, then there was also a (joint and several) division of the chancel repair liability.

In some cases the former monasteries became the cathedral churches of new dioceses, effectively retaining their former property by way of endowment; in other cases monastic property was transferred to existing cathedrals by way of additional endowment. But in the majority of cases the property of the religious houses was disposed of by the Crown in favour of lay institutions, notably Oxford and Cambridge Colleges, and lay individuals. I guess that today the latter would be called "Henry's cronies". Thus for the first time rectories and rectorial property came to be owned by lay institutions and lay individuals - this would not have been possible previously but it was now specifically authorised by The Suppression of Religious Houses Act 1539.

These "lay impropriators", as they came to be known, inherited with the rectorial property the liability for chancel repairs; the same of course applied to the cathedrals which had retained rectorial property or had it transferred to them. In all such cases the liability for chancel repairs passed to subsequent owners of the rectorial property and as that property became fragmented, the number of lay impropriators or "lay rectors" obviously increased (something which had probably not been foreseen or sufficiently thought through at the time of the dissolution of the monasteries). Thus there could be quite a number of people with responsibility for repairing the chancel of a particular church and, as it was a joint and several liability, each one could be made responsible for the full cost of repairs, though with rights of contribution from the other lay rectors according to the respective values of their portions of the rectorial property. The numerous rectories which had not passed into the hands of the monasteries were of course still held by the local parsons who continued to receive the profits arising from the rectorial property (the glebe and the tithes) and in consequence to be responsible for the repair of the chancel of the church.

In speaking thus far of the incidence of chancel repair liability on rectorial property, I have not drawn any distinction between glebe and tithes, as in legal terms it seems quite clear that the liability attached equally to both - and in theory at least the liability could in some cases still attach today to land which had been glebe in mediaeval times, though the prospects of being able to identify land as such former glebe are usually fairly remote. However, what happened following the dissolution of the monasteries was that in practice it was found easier

and more convenient to enforce chancel repair liability against tithe owners only; they were readily identifiable and the entire liability could of course be enforced against any one tithe owner who was then left to extract contributions from the other owners of the rectorial property. Accordingly, in the general perception liability for chancel repairs came to be regarded as particularly attached to tithes or, after tithes had been commuted, to tithe rentcharge (more of which later). Most of the subsequent legislation which had a bearing on chancel repair liability dealt exclusively with tithe or tithe rentcharge, and the parts of the Tithe Act 1936 which provide for the ascertainment of chancel repair liability appear to assume that by then the entire liability had become concentrated in the ownership of tithe rentcharge. So from now on the emphasis will be on tithes (or tithe rentcharge) but with the qualification that there is some possibility, albeit remote in practice, of chancel repair liability still attaching to land which had been glebe during the mediaeval period.

Now as I have already indicated, tithes were a source of aggravation and came to be regarded as a nuisance about which something needed to be done. The first opportunity for such action usually arose in connection with the enclosure of the parochial common lands. You will recall that there was a time when every village had an area of land enjoyed by the villagers in common for pasturing their livestock, wood-gathering and so forth. From the end of the 17th century onwards there was an increasing tendency for these lands to be "enclosed", that is to say fenced off in sections with the parcels of land thus created being appropriated to particular owners. This process was for the most part carried out under the authority of Acts of Parliament (of which I believe there were some 2,230) supplemented by local Enclosure Awards. An Enclosure Award could (and often did) allot part of the former common land to the rector (whether spiritual or lay) to the intent that the land so appropriated should stand in place of the rectorial tithes. The appropriation to the rector did of course mean that the amount of former common land available for the villagers was diminished, but what was left for them was of course freed from the liability for tithes. All of which on the face of things seems a reasonable arrangement and one hopes that everybody was happy. Any land so acquired by a rector did of course become rectorial property (in lieu of the tithes) and chancel repair liability therefore became attached to the land and passed with the ownership on subsequent disposal. In the event of appropriations in favour of more than one rector in an Enclosure Award and/or the subsequent subdivision of the land appropriated, there was of course joint and several liability. For an example of chancel repair liability arising under an Enclosure Award I would refer you to the case of Chivers and Sons Ltd v Air Ministry [1955] Chancery Reports, page 585.

So a possible source of information as to whether a particular piece of land is affected by chancel repair liability is the Enclosure Award, assuming of course that one was made in respect of the parish in question. If there is one, there are a number of places where it may be found - possibly at the Public Record Office, at the County Record Office, with the relevant Local Authority or it may even still be held locally in the parish concerned. What sort of state it will be in and how easy you will find it to follow the plans on it are other questions.

The next thing of significance was the Tithe Act 1836 which provided for the conversion of still subsisting tithes into tithe rentcharges; 100 years later the Tithe Act 1936 provided for the extinguishment of such rentcharges. However, before I deal with all that, I want just to mention briefly what is described in the Law Commission Report of 1983 as "a subject of some obscurity", namely the matter of corn rents and other similar payments. This has nothing to do with chancel repair liability attached to land, but it is worth mentioning as part of the overall picture. I have already explained how under the Enclosure Acts land could be allotted in lieu of the right to tithes. However, that was not the only thing that could happen to tithes under those Acts. In somewhere around 25% of the many Enclosure Acts some or all of the tithe liabilities in the Parish were converted into rentcharges which varied with the price

of corn and which were accordingly known as "corn rents"; similar rentcharges were created in lieu of tithe liabilities under other local Acts as opposed to under an enclosure scheme. These provisions anticipated the general conversion of tithes into tithe rentcharges under the Tithe Act 1836. However, the Tithe Act 1936 provided for the extinguishment only of rentcharges created pursuant to the 1836 Act - it did not affect rentcharges such as corn rents which had been created prior to 1836 nor did it say anything about the chancel repair liability associated with such payments. The position would therefore appear to be that where corn rents or other pre-1836 rentcharges are receivable, they carry with them chancel repair liability as in principle the position is no different from that of land which was allotted in lieu of rectorial tithes. The Law Commission Report stated that the extent of chancel repair liability under this head was not known, but it noted that the overwhelming majority of the corn rents and other similar payments collected by the Church Commissioners appeared to represent not rectorial but vicarial tithes to which no chancel repair liability would have attached in any event. The Report suggests that it may therefore be reasonable to infer that when tithes were commuted prior to 1836 lay rectors tended to take land rather than money payments.

A further question which exercised the Law Commission in 1983 was what happened to the chancel repair liability attaching to corn rents and other rentcharges (whenever created) in the event of these being redeemed pursuant to the provisions of various of the Tithe Acts which were passed during the 19th century; the redemption of payments such as corn rents was specifically provided for in the Tithe Rentcharge Redemption Act 1885. The Report discusses a number of possibilities and also the application of the Limitation Acts. It is all fascinating stuff and somewhat difficult to understand, let alone to explain, and I do not propose to go into further detail. Suffice it to say that the Report concludes that "all that can be said for certain about chancel repair liability in connection with redeemed rentcharges is that the position is uncertain".

However, I have digressed somewhat and we must get back to the next major port of call, namely the Tithe Act 1836. As I have already indicated, the 1836 Act introduced procedures for converting existing tithes into money liabilities, known as "tithe rentcharges", charged on the lands in respect of which tithes had been payable. With a few minor exceptions, within a few years of 1836 all tithes had been converted into tithe rentcharges either under local agreements or by awards made by the Commissioners appointed to carry the Act into effect. Tithe rentcharges created under the Tithe Act 1836 were similar to the former corn rents because the actual sum payable each year varied according to the average prices of wheat, barley and oats for the previous seven years and was thus directly linked to the prosperity, or otherwise, of agriculture. Provision was made in a later Tithe Act, in 1860, for former corn rents to be converted into tithe rentcharges if so desired.

Now apart from providing for the conversion of tithes into tithe rentcharges, the Tithe Act 1836 contained two provisions of particular relevance to chancel repair liability. First, where the rectory was still held by an ecclesiastical owner, land instead of tithe rentcharge could be given to the rector in replacement of the former tithes. Where this was done, the effect was the same as that of an award of land in lieu of tithes to the rector under an enclosure scheme; the land became rectorial property and accordingly chancel repair liability became attached to its ownership.

Secondly, there was a provision which applied whether the rectory was in ecclesiastical or lay hands - this was the provision for merger of tithes, or tithe rentcharge where conversion had taken place, in the land out of which it issued. To illustrate this let us imagine a situation where X is entitled to receive tithe or tithe rentcharge issuing out of land belong to Y; Y is obliged to make the payment to X but as what X is receiving is rectorial property, it carries

with it chancel repair liability. Obviously it will be an economic decision but the Act enables X to make a declaration merging the tithe or tithe rentcharge in Y's land. X thus loses his right to the tithe or tithe rentcharge and Y no longer has to pay it; however, it is rectorial property which is being merged in Y's land and it carries with it chancel repair liability which from then on is attached to that land and X of course is discharged from the liability.

To take a further example, X might have become the owner not only of the tithe or tithe rentcharge (with consequent chancel repair liability) but also of the land out of which it was payable. In such a case there was no automatic merger of the tithe or tithe rentcharge in the land but clearly the payments would go into abeyance for so long as the two were in the same ownership, as there would be no point in X making payments to himself. He would be free to dispose of the tithe or tithe rentcharge on the one hand or of the land on the other, the former carrying with it chancel repair liability. Under the Tithe Act 1836, X could however again execute a Declaration of Merger with the same result as in the previous example, namely, that no further tithe or tithe rentcharge would be payable and chancel repair liability would attach to the land in which it had been merged. That would of course mean that X would remain liable for chancel repairs for so long as he owned the land but when he sold it, the liability would pass to the new owner.

The Tithe Act 1836 was followed by a number of further Tithe Acts during the 19th century and I do not think that I need go into these in any great detail. One point which is worth mentioning is that the Tithe Act 1839 enabled persons entitled to exercise the powers of merger to which I have referred especially to apportion any charge incumbrance or liability on part only of the lands affected; from 1839 onwards this power of special apportionment was used (in Declarations of Merger) so as to impose the liability for chancel repairs on certain land, in exoneration of all other land, in the parish concerned. There were also various provisions for the redemption of tithe rentcharges and I have already referred to the difficulties identified by the Law Commission in the 1983 Report as to what happened to the chancel repair liability when tithe rentcharges were redeemed pursuant to these provisions.

So from 1836 onwards tithe rentcharges created under the Tithe Act of that year (and also former corn rents which had been converted into tithe rentcharges) might cease to exist either on redemption or on merger in land. The Tithe Act 1936 abolished all tithe rentcharges (including corn rents which had been converted into tithe rentcharges) which had been created since 1836 and which were still in existence 100 years later; the 1936 Act did not however affect corn rents and other payments which had been in existence in their original form since before 1836.

Before considering the detailed provisions of the Tithe Act 1936, it is necessary to mention briefly some further legislative provisions beginning with section 52(1) of the Ecclesiastical Dilapidations Measure 1923. This provided that where a spiritual rector was solely responsible for the repair of the chancel, the liability was to be transferred from him to the PCC, which was of course already responsible for the repair of the remainder of the church. This provision did not apply where a spiritual rector shared the chancel repair liability with others but I believe that such cases were the exception rather than the rule. However, spiritual rectors were finally relieved of any remaining chancel repair liability which they might have when this was transferred to PCCs by section 39 of the Endowments and Glebe Measure 1976. I shall be returning to the Ecclesiastical Dilapidations Measure 1923 later on and I shall also have something to say about the Chancel Repairs Act 1932, but I turn now to the Tithe Act 1936.

The Tithe Act 1936 in effect brought about the final demise of the ancient tithe system as modified by earlier legislation; but unlike the earlier legislation the 1936 Act dealt

specifically, in its Seventh Schedule, with the question of chancel repair liability. It does however have to be emphasised that the 1936 Act dealt only with chancel repair liability arising from tithe rentcharges created under the Tithe Act 1836; it did not affect chancel repair liability in so far as this arose from, e.g., ownership of ancient glebe, uncommuted tithes or land allotted in lieu of tithes under an Enclosure Award.

The general scheme of the 1936 Act was that tithe rentcharges were abolished. Those who had been entitled to receive them received instead by way of compensation 3% redemption stock issued by the government; to fund this, those who had previously been liable to pay tithe rentcharges paid instead tithe redemption annuities to the government. These were terminable charges which originally were to have been paid until 1996 but they were in fact terminated prematurely in 1977.

So far as chancel repair liability was concerned, the Tithe Act 1936 divided tithe rentcharges into four classes:

Class (a) - Rentcharges receivable by persons other than those in class (b). For convenience I will refer to this class as "private rentcharge owners". These rentcharges were extinguished and compensation stock was issued. Part of the stock was issued to the rentcharge owners and part to the appropriate diocesan authority; the proportion issued to the diocesan authority was to be a part of the redemption stock equal to such sum as having regard to the condition of the chancel in 1936 would be reasonably sufficient to provide for future repairs and insurance against fire. This proportion of the redemption stock (and if the chancel had been in a very poor state it could have been all of it) was issued to the diocesan authority on behalf of the Parochial Church Council which then became liable for repairing the chancel. So far as the former rentcharge owners were concerned, there was in effect a compulsory discharge of their chancel repair liability.

Class (b) - Rentcharges receivable by spiritual rectors (i.e. those whose rectories had never become subject to lay impropriation), the Church Commissioners, ecclesiastical corporations such as Deans and Chapters, Oxford, Cambridge and Durham Universities and their constituent colleges, and the colleges at Winchester and Eton. These rentcharges were extinguished and compensation stock was issued in full in respect of them. These various bodies remained liable for chancel repairs and of course that is perfectly logical as the compensation stock took the place of rectorial property which they had owned previously. Although spiritual rectors are included in this class, you will recall that their liability for chancel repairs had in most cases already passed to the Parochial Church Council under section 52(1) of the Ecclesiastical Dilapidations Measure 1923.

Class (c) - Rentcharges which were not currently payable because they and the lands out of which they were payable were owned by the same person. You will recall that in this situation the earlier legislation did not provide for an automatic merger of a rentcharge in the land out of which it was payable - this only occurred if a formal Declaration of Merger was executed. This class covers rentcharges where there had been no such Declaration but where the rentcharge and the land burdened were nonetheless in common ownership. In this situation the Tithe Act 1936 (unlike the 1836 Act), automatically merged the rentcharge in the land out of which it was payable and the rentcharge was thus extinguished. As the right to receive and the liability to pay the rentcharge had been vested in one and the same person, no compensation stock was issued and no tithe redemption annuity became payable. However, as had been the case under the express mergers effected under the earlier legislation, the rentcharge carried with it into the land into which it was merged its attendant chancel repair liability, which thus became attached to that land.

Class (d) - Rentcharges which had already been the subject of Declarations of Merger under the Tithe Act 1836 and subsequent Acts. As these had already been extinguished, they did not require further extinction in 1936 and clearly there was no need for the issue of any compensation stock or for payment of any tithe redemption annuity in respect of them. However, as we have seen, on merger into the lands out of which they were payable, these rentcharges took with them their attendant chancel repair liability; they were therefore included in the Tithe Act 1936 in order to add them back to the sum total of the original tithe rentcharges so that the lands in which they had merged should bear their proper share in the apportionment of the chancel repair liability flowing from the tithe rentcharge source.

So these were the four categories of rentcharge set out in the 1936 Act. A Commission (known as the 'Tithe Redemption Commission") was appointed to put the Act into effect and in particular to deal with the question of chancel repair liability though, as I have said, the Act dealt only with chancel repair liability attached to the ownership of tithe rentcharge arising under the Tithe Act 1836.

In order to do its work the Commission had to take the following steps in relation to every chancel, liability for the repair of which attached to the ownership of tithe rentcharge. Questionnaires were circulated to all parishes: -

1. First, the Commission had to obtain details of all rentcharges to which the liability had attached at any time since 1836.

2. Secondly, it had to ascertain which of these rentcharges had been redeemed or had otherwise ceased to carry liability for chancel repair prior to 1936.

3. The third step was achieved by a process of elimination following the completion of the first two steps, namely ascertaining which rentcharges still carried the liability in 1936 and the aggregate amount of them.

4. Next, as was usually the case, there was more than one rentcharge which still carried the liability, it was necessary to ascertain the amount of each rentcharge falling within the four classes of rentcharge mentioned in the Act and which I have already described.

5. The final step was to ascertain the proportion which the amount of each rentcharge which still carried the liability bore to the total amount of the rentcharges which were subject to the liability.

All of this information was included in a document known as a "Record of Ascertainments" and the easiest way of understanding how this worked in practice is to look at an actual example. I would therefore refer you to the copy of the Record of Ascertainments for the Parish of Bardney in the Diocese of Lincoln which is at the back of the papers which you have.

The Record of Ascertainments for the Parish of Bardney is in fact a good example because, as you will see, it includes rentcharges in all four of the classes of rentcharge mentioned in the Tithe Act 1936 - this is by no means always the case. The figure at the top, £395 15s 7d, is the aggregate amount of the rentcharges as ascertained by the Tithe Redemption Commission to which chancel repair liability still attached; this is then broken down into the four categories as follows:

(a) These are the "private" rentcharges as I have called them which were still receivable up to 1936 but which were to be extinguished by the issue of stock, in part to the rentcharge owner and in part to the diocesan authority, with this part of the chancel repair liability being transferred

(b) These are the "ecclesiastical corporation" rentcharges which again will be extinguished with the whole of the stock being issued to the rentcharge owners who retain also their full share of the chancel repair liability. As you will see, this accounts for by far the greatest part of the liability in this particular case.

(c) These were the rentcharges which still existed but were not currently payable because they belonged to the same people as did the land out of which they issued. These were to be extinguished by merger in the land out of which they issued and that land became liable for the appropriate proportion of the chancel repair liability. The total figure of £93 5s lid is broken down in the First Schedule to the Record

(d) These were the rentcharges which had been the subject of Declarations of Merger under the earlier Tithe Acts and which had taken with them into the land concerned their attendant chancel repair liability. As I have previously mentioned, that part of the liability had to be brought into the equation under the Tithe Act 1936 and the total of these rentcharges, 17s, is broken down in the Second Schedule to the Record.

Then in paragraph 3 we have this mysterious fraction, 1/94987. What we are looking at is of course long before the days of decimal currency and 94,987 is the number of old pennies in £395 15s 7d. What it comes down to is that for each penny's worth of rentcharge which he owns, each rentcharge owner has to contribute one 94,987th of the cost of repairing the chancel - or to put it more simply, the repair contributions are in the same proportions as the respective rentcharge amounts bear to the total.

For example, let us suppose that the chancel needed work doing to it costing £600. Those in class (b) would have to contribute £600 multiplied by the number of pence in £254 15s 0d and then divided by the number of pence in £395 15s 7d - i.e. £600 x 61,140 +94,987 = £386 4s 0d. £254 15s 0d is very roughly two thirds of £395 15s 7d and £386 4s 0d very roughly two thirds of £600 - so you see how it works. The amount payable would be apportioned between the two bodies mentioned in class (b) according to their respective rentcharge amounts - i.e. approximately three fifths to Queen Anne's Bounty and approximately two fifths to the Ecclesiastical Commissioners. It does not take a lot of imagination to realise what would be involved in calculating and collecting the amounts due from the owners of the various pieces of land listed in the First and Second Schedules to the Record, though it might of course be that a number of the parcels listed were in the ownership of the same person. I suspect that because of difficulties like this and having regard also to pastoral considerations, the liability has in many cases not been enforced. I should imagine that in practice the tendency has been to require payment from those individuals whose land can be shown to bear the whole or a substantial proportion of the liability

The Record of Ascertainments, and in particular of course the two Schedules to it, must be read in conjunction with the tithe map which identifies the areas of land referred to in the Schedules. Because of changes which have taken place on the ground since the tithe maps were prepared, it is not always easy to reconcile them with modern Ordnance Survey Maps when trying to identify particular pieces of land. Copies of Records of Ascertainments and tithe maps, the completeness and accuracy of which cannot incidentally always be

guaranteed, may be found in a number of places, namely the Public Record Office, Diocesan Offices, Diocesan Registries and in the parishes themselves.

Another important point about the Tithe Act 1936 is that under it chancel repair liability is apportioned at law so that a PCC can recover from a particular land owner only the proportion of the repair costs shown for that person's land in the Record of Ascertainments. This runs contrary to the general common law principle of joint and several liability which would still apply in the case of chancel repair liability arising from the ownership of, e.g., ancient glebe or land allotted in lieu of tithe under an enclosure award. There is however no provision in the Tithe Act 1936 for sub-apportionment so that if there had been a sub-division of land in respect of which a particular fraction of the liability was apportioned in the Record of Ascertainments, each of the owners of the sub-divided area will be jointly and severally liable for the whole of the apportioned fraction (though with a right to claim appropriate contributions from the others).

It may be helpful if at this stage I pause just to summarise the categories of persons and bodies who, apart from PCCs, may be liable to contribute towards the cost of repairs to the chancels of parish churches. They are as follows:

1. The Church Commissioners, Deans and Chapters of Cathedrals, Oxford, Cambridge and Durham Universities and their constituent colleges, Winchester College and Eton College.

2. The owners of former glebe which passed into lay hands following the dissolution of the monasteries.

3. Owners of land which was allotted in lieu of tithe to a lay owner of tithe under an Enclosure Award.

4. Persons and bodies who are still entitled to receive pre-1836 corn rents (and other similar payments) in lieu of rectorial tithes.

5. For practical purposes probably the most important category, owners of land in which the right to tithe or tithe rentcharge has been merged, under either the Tithe Act 1936 or an earlier Tithe Act, as identified in the Records of Ascertainments and on the attendant tithe maps.

So those are the categories of bodies and persons on whom the liability may fall and there are just a few further points which I wish to mention before I finish.

Assuming the liability exists, what is the extent of it in terms of physical repairs? It is certainly not an unlimited liability - it is generally regarded as extending to keeping the chancel wind and water tight and maintaining essential fittings. There is no obligation to provide or repair that which is purely ornamental or decorative; nor is there any obligation to pay for enlargements or improvements but if these are carried out, the lay rector will be liable to maintain the chancel in its enlarged or improved form.

So far as the enforcement of the liability is concerned, this is now provided for in the Chancel Repairs Act 1932. Before then enforcement had been a matter for the ecclesiastical courts, and the 1932 Act came about as a result of a Mr. Stevens having ended up in Bedford Gaol for having disregarded an order from a Diocesan Chancellor requiring him to repair a chancel for which he was liable - those were the days! The 1932 Act abolished the jurisdiction of the ecclesiastical courts in these matters and substituted a procedure whereby the PCC was

enabled to serve a notice to repair on anyone liable to repair the chancel; if the notice has not been complied with after one month, the PCC may take proceedings in the County Court which may give judgment for the payment of the sum which in the Court's opinion is necessary to repair the chancel - please note that this Act was passed prior to the legal apportionment of chancel repair liability under the Tithe Act 1936. PCCs should not be too hasty in bringing proceedings - the Court may adjourn the case to give time for the repairs to be carried out and if they are then carried out, the Court is required to give judgment in favour of the defendant with the usual consequences as to costs so far as the PCC is concerned.

Compounding, or "buying out", the liability is provided for in the Ecclesiastical Dilapidations Measure 1923 as amended by the Ecclesiastical Dilapidations (Amendment) Measure 1929. The sum required to be paid to compound the liability is such sum as is reasonably sufficient to provide for future repairs to the chancel and to produce the income necessary to ensure it against destruction by fire; the Church Commissioners have power to determine this amount if it cannot be agreed locally. But this is again before the Tithe Act 1936 and it seems to be the case that in strict law there can be no compounding of a part only of the liability in respect of any one chancel - you can only buy out the entire liability. It follows that only a body or person with a full or a very large percentage liability would have any incentive to compound the liability and the sums involved could of course be very large depending on the condition of the chancel at the relevant time. So far as I can gather, very little use has been made of the provisions for compounding chancel repair liability.

For the sake of completeness I will say a brief word about Wales. Prior to the disestablishment of the Church in Wales in 1920, the legal position with regard to chancel repair liability there was exactly the same as in England. In principle it still remains so though with some variations consequent upon disestablishment but I do not think that I need go into further detail about these.

I must acknowledge, and commend to you if you would like some further reading on this subject, the sources on which I have drawn in preparing this talk. They are the Law Commission Report of 1983 - Working Paper No. 86, the Legal Opinions Concerning the Church of England and some excellent articles which appeared in the Law Times in April 1947 and October and November 1955. Although they were written quite some time ago, I found these articles very helpful and this is not of course an area of law which is subject to particularly rapid change.

TITHE ACT, 1936.

Section 31 and Seventh Schedule.

Record of Ascertainments.

COUNTY: Lincoln.

CHANCEL: Bardney (St. Lawrence)

1. The Tithe Redemption Commission have ascertained in relation to the chancel above-mentioned, that the apportionable amount of rentcharge liability is ... ... £ 395 15 7

2. The Commission have also ascertained in relation to the chancel above-mentioned, that the residue mentioned in paragraph 1 (c) of Part I of the Seventh Schedule to the Act comprises two or more rentcharges and consists of:

(a) rentcharges in respect of which stock is to be issued under the Act and which were not vested immediately before the second day of October, 1936, for an interest in fee simple in possession in any of the corporations or bodies mentioned in the proviso to sub-section (2) of Section 31 of the Act, amounting in all to 46 17 8

(b) certain rentcharges in respect of which stock is to be issued under the Act and which were vested immediately before the second day of October, 1936, for an interest in fee simple in possession in the corporations or bodies following (being among those mentioned in the proviso to sub-section (2) of Section 31 of the Act) to the aggregate amounts mentioned opposite the name of each:

The Governors of Queen Anne's Bounty £150.8.9

The Ecclesiastical Commissioners for England £104.6.3.

254 15 -

(c) certain rentcharges specified in the First Schedule hereto and so vested between the twenty-sixth day of February, 1936, and the second day of October, 1936, as to render the provisions of Section 21 of the Act applicable thereto, amounting in all to 93 5 11

(d) certain rentcharges specified in the Second Schedule hereto and merged or extinguished under the Tithe Acts, 1836 to 1925, in land to which the provisions of Section 1 of the Tithe Act, 1839, apply, amounting in all to ... ... 17 -

£395 15 7

3. In respect of each tithe rentcharge mentioned in paragraph 2 hereof, the Commission have ascertained that the appropriate proportion of the liability for the repair of the above chancel is 1/91487 for a tithe rentcharge of 1d. (par value) and proportionately for any other amounts.

IN WITNESS whereof the Official Seal of the Tithe Redemption Commission has been hereunto affixed this twenty-eighth day of March, nineteen hundred and forty-two.

L.S.

(Signed) H. G. RICHARDSON.

AUTHORISED BY THE COMMISSION.

W. & Co., Ltd. 4294

First Schedule.

Particulars of the rentcharges comprised in class (c) of paragraph 2 of this Record are given

County Lincoln. Chancel Bardney (St. Lawren

1. Name of Tithe District.	2. Number in Instrument of Apportionment in force immediately before 2nd October, 1936, referring to plan.	3. Amount of Rentcharge. £	s.	d.
Bardney (except Southrey)	107	5	9	11
	105	6	4	4
Southrey	40	5	4	11
	41	5	3	5
	44	5	6	3
	12	-	6	4
	82	-	5	3
	2	2	14	6
	23	3	15	-
	36	7	18	10
	37	5	17	11
	38	6	11	6
	1	2	1	7
	10	-	11	1
	76	-	5	4
	20	5	8	10
	27	-	3	2
	54	-	3	9
	85	-	2	7
	86	-	3	5
	4	2	8	4
	5	2	6	8
	22	5	8	10
	78	-	2	8
	87	-	2	10
	79	-	1	4
	53	-	2	8
	61	-	1	4
	3	2	8	4
	21	5	8	10
	29	-	6	1
	50	-	2	4
	89	-	2	8
	93	-	1	9
	7	2	5	11
	67	-	3	8
	94	-	1	8
	8	3	2	2
	25	-	2	2
	83	-	2	6
	6	3	7	8
	60	-	1	3
	28	-	9	3
	91	-	6	2
	92	-	-	11
		£93	5	11