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## The Office of Lay Reader.<sup>1</sup>

### III.

#### THE QUESTION OF LEGAL STATUS.

AT a Conference on the work of Lay Readers in our Church, which was held in the Church House, Westminster, in the summer of 1913, I read by request a paper on the legal aspect of that work. On that occasion I prefaced my remarks by observing that the subject involved the consideration of some obscure and doubtful questions, and that it was not the practice of lawyers to pronounce a definite opinion on knotty points of law unless they were called upon to do so judicially or upon being professionally consulted. I therefore begged that any views which I might express should be taken as put forth tentatively by way of suggestion rather than as, in any sense, authoritative and final. I feel bound to make the same reservation at the outset of the present article.

If I were asked to state concisely what is the legal status at present possessed by lay readers in the Church of England, I should be inclined to say that, as regards their ecclesiastical powers and duties, they have no actual legal status. That is to say, their rights and powers and functions are, in the eye of the law, the same as those of the ordinary layman. At the same time the *Guardian* of June 7, 1917, records that on the previous Saturday (June 2), in a test case brought by the military authorities at Camberley, the magistrates decided that a diocesan reader was exempt from the provisions of the Military Service Act as being "a regular minister of a religious denomination." The only mention of readers in *The Laws of England* is in the following terms—

"The office of lay reader to assist the parochial clergy in their spiritual ministrations has of late years been revived in the Church. The functions of lay readers are defined by regulations of the Archbishops and Bishops issued in October, 1905, but they have otherwise no legal status". (Vol. 28, *ii*. Ecclesiastical Law. Part II, Sect. 6, subsect. 8, p. 480.)

We shall discuss later on the precise effect of the Regulations of October, 1905. I will here only point out that these Regulations

<sup>1</sup> Previous articles in this series appeared in the *CHURCHMAN* of May (I, History and Present-Day Use, by Mr. W. A. Kelk) and June (II, Some Reminiscences, by Dr. Eugene Stock).

confer no rights and impose no duties upon lay readers which could be enforced by or against them in any ecclesiastical or civil court otherwise than in their character of simple laymen. When, therefore, the question is asked what are the strictly legal powers of lay readers as regards conducting or taking part in services either in consecrated buildings or elsewhere, and particularly as regards assisting in the administration of Holy Communion, the answer is to be found in ascertaining what are the legal powers of laymen in general in reference to these matters. This was in fact the view taken by the Joint Committee of the two Houses of the Canterbury Convocation appointed in 1903 to consider the question of restoring an Order of Readers or Sub-deacons in the Church. In their Report issued in the following year, when they deal with the legal aspect of the matter and particularly with the question whether the rubrics in the Prayer Book, either in its earlier or in its present form, and the Act of Uniformity of 1662, impose restrictions on lay readers officiating in the services of the Church, they refer to the opinion given by Sir Arthur Charles in 1884 on the powers of laymen generally in this respect. That eminent ecclesiastical lawyer expressed his views on the subject as follows —

“ Whilst I think that, having regard to the Twenty-third Article of Religion, the Canons of 1604, and the Preface to the Form of Making, Ordaining and Consecrating Bishops, Priests, and Deacons, laymen cannot lawfully publicly preach or minister the Sacraments, I am of opinion that they may lawfully, in a consecrated building, say the Litany or any other part of Morning and Evening Prayer which is not expressly directed to be said by a priest, provided they are authorized to do so by the incumbent and Bishop. It is true that the word ‘minister’ undoubtedly means ordained minister (*Kemp v. Wickes*, 3 Phillimore’s Reports 276; *Mastin v. Escott*, 2 Curteis’s Reports 692; *Escott v. Mastin*, 4 Moore Privy Council Cases 104) and that the rubrics in many instances expressly direct that the ‘minister’ shall say this or that particular portion of the service; but these rubrics are, in my opinion, directory only, and do not exclude properly authorised laymen from saying such portions, as well as those portions where there is no express rubrical direction.”

The Joint Committee of Convocation, while admitting that there was some difficulty in dealing with the question, affirmed their general agreement with this opinion, so far as respects the saying by a layman of the Litany and other parts of Morning and Evening Prayer not expressly directed to be said by a priest. But it may be observed that Sir Arthur Charles makes no reference to the Act of Uniformity of 1662. Section 2 of that statute directs that morning and evening

prayer shall upon every Lord's day and upon all other days and occasions, and at the times appointed, be openly and solemnly read by every minister and curate in all churches, chapels, and other places of public worship. The Joint Committee rightly drew attention to this enactment, and it led them to the conclusion that where a minister belonging to a parish was present, he ought to read the whole of the service and not leave any part to a lay reader, to whom permission could only legally be given to read when the proper minister was absent, except in case of necessity, such as the blindness or infirmity of the proper minister.

The Act of Uniformity of 1662 was passed, as every one knows, in order to preclude ministers not episcopally ordained from officiating in the Church. But in its terms it equally excluded the lay readers, who during the preceding hundred years had filled gaps in the parochial ministrations which were occasioned by a deficiency in the number of the clergy. The duties of these readers were carefully defined by archiepiscopal and episcopal authority in the early years of Elizabeth's reign. They were required to promise that they would not preach or interpret, but only read that which was appointed by public authority; that they would not administer the sacraments or other public rites of the Church, but would bury the dead and purify women after childbirth; that upon due notice they would give place to a learned minister, if appointed on the presentation of the patron of the parish; that they would only read in poor parishes destitute of incumbents, except in case of sickness or other good cause allowed by the ordinary. And they were to be maintained by a small stipend provided out of the revenues of the benefice where they served, and not by the labours of their hands. These regulations have clearly no force in the present day. The whole series, and particularly the powers of the readers as to conducting funerals and churchings, are contrary to the provisions of the Act of Uniformity of 1662, and were therefore abrogated by it. Nevertheless, the ministrations of lay readers appear in some remote parts of the country to have survived the Act and to have been continued until towards the close of the eighteenth century. In Burns' *Ecclesiastical Law*, published in 1760, it is stated that "in this Kingdom in churches or chapels, where is only a very small endowment and no clergyman will take upon him the charge or cure thereof, it hath been usual to admit readers to the end that divine service in such places

might not altogether be neglected." And in a judgment in the case of *Martyn v. Hind* (2 Cowper's Reports 437), delivered as late as 1776, Lord Mansfield said, "I have been informed that in the Welsh dioceses, where there is no endowment worth the while of a clergyman to accept (and in Chester there are many such), many persons officiate as readers in opposition to clergymen," meaning thereby, as distinguished from clergymen. If he had been asked his opinion on the legality of the practice, he would probably have replied that it was not strictly legal, but could be justified on the principle that necessity knows no law.

The Report of the Joint Committee of the Canterbury Convocation in 1904 was followed by the passing of resolutions on the subject by the Upper and Lower Houses of Convocation and the House of Laymen in both Provinces; and in pursuance of these resolutions the Archbishops and Bishops of the two Provinces drew up in October, 1905, a set of Regulations respecting Readers and other Lay officers, in which the powers and duties of Diocesan Readers, Parochial Readers, Catechists, and Evangelists or Trained Readers are carefully defined. Under these Regulations: (1) A Parochial Reader may be licensed (a) to visit the sick and read and pray with them, to take services in Sunday School and elsewhere, and generally to give such assistance to the incumbent as he may lawfully direct; (b) in unconsecrated buildings used for public worship (i) to read such services as may be approved by the Bishop; and (ii) to expound the Scriptures and give addresses; and (c) in consecrated buildings (i) to read such portions of the order of Morning and Evening Prayer and Litany as may be specified in his licence (which must not be those specifically ordered to be read by a priest or minister, except the lessons, but may include the Litany up to the Lord's Prayer and any of the occasional prayers or thanksgivings, the Prayer of St. Chrysostom, and 2 Cor. xiii. 14), (ii) to read selected and approved homilies or sermons, and (iii) to catechize children outside the appointed services of the Church. (2) A Diocesan Reader may be commissioned to perform all the duties of a Parochial Reader with the addition of such leave to give addresses in consecrated buildings as the Bishop of the diocese may lawfully grant, provided that such addresses may not be delivered during any of the appointed services of the Church. These Regulations obviously purported to be in the nature of by-laws, directing and controlling legal functions which were assumed to be

already in existence. They were not and did not pretend to be legislative enactments making legal what was not legal before. Our prelates had no power to frame any such enactments, and they did not profess to do so ; for, as we have seen, they limited the general assistance which a reader might give to an incumbent to what the incumbent might lawfully direct, and they restricted the Bishop's permission to a diocesan reader to give addresses in consecrated buildings to such permission as the Bishop might lawfully grant. In order, therefore, to ascertain the actual legal status of our lay readers, we must investigate the law as it stands independently of the Regulations. And there are three points to which our inquiry may be usefully directed, namely, as to their legal status in respect of (1) conducting or assisting in the regular appointed services of the Church, other than Holy Communion ; (2) preaching in consecrated buildings ; and (3) assisting in the Communion Office.

As regards (1) we note that in the rubrics in the Prayer Book nothing is laid down as to the person or persons by whom the *Venite* and the other Canticles, the Psalms, the Collects, and the following prayers to the end of the morning and evening services, and the prayers and thanksgivings upon several occasions, and the Litany down to the Lord's Prayer, are to be said. It is the invariable practice for the Canticles and Psalms either to be sung throughout by the choir and congregation or to be repeated in alternate verses by the minister and people ; and if this is lawful, it must clearly be equally lawful for a single layman to read the odd verses. The Joint Convocation Committee cite in their Report several instances of the practice of the Litany down to the Lord's Prayer being chanted throughout by singing clerks, instead of the minister taking the leading part. As regards the lessons, it is, as we know, quite usual for a layman to read them. In the Regulations of 1905 it seems to be considered that the rubrics direct that they shall be read by the minister. This is not exactly the case. "The minister" is to say, before and after every lesson, "Here beginneth, etc.," and "Here endeth, etc." But the actual reader is referred to as "he that readeth,"—apparently in contrast to, or at any rate not necessarily the same as the minister.<sup>1</sup> I believe that in some few places this

<sup>1</sup> In 1896, in answer to an inquiry addressed to him on the subject by a vicar in the diocese of York, the late Lord Grimthorpe replied as follows in his usual trenchant style : "Dear sir, the only answer I can give you is that the

distinction is actually observed ; but the instances of its being adhered to are extremely rare. In fact, as regards the person to officiate, the rubrics generally are in practice treated, to use Sir Arthur Charles's expression, as directory rather than as mandatory. There is no scruple about a deacon saying, in Morning and Evening Prayer and the Litany, the portions assigned by them to a priest, with the one single exception of the Absolution ; and if a deacon may say these portions, there appears to be no conclusive reason, so far as the rubrics are concerned, why a layman may not also say them when no ordained minister is present. The Regulations, however, clearly contemplate readers, who are licensed to do so, relieving the clergy by sharing with them the recital of the prayers, and this in some dioceses is actually done. But, as already stated, the Joint Convocation Committee considered that this would be illegal as an infraction of the requirement of the Act of Uniformity of 1662, that Morning and Evening Prayer shall always be said by ministers and curates. The question is arguable whether this view is correct, or whether the enactment is satisfied by their saying such portions of the services as in the rubrics are expressly directed to be said by the priest or minister, provided that the rest is duly said by some other authorized person or persons. In practice, as has been already observed, the enactment is never construed as requiring the officiating minister to repeat the whole of the Canticles and Psalms.

It will be remembered that Sir Arthur Charles, in his Opinion, referred to the Twenty-third Article, the Canons of 1604, and the Preface to the Ordinals as bearing upon the law on the subject. The Twenty-third Article and some of the canons relate to the second head of our inquiry. But the Fifteenth Canon directs that the Litany shall be said or sung by the parsons, vicars, ministers, or curates in all cathedral, collegiate, and parish churches and chapels. It is notorious that many of the canons have fallen into desuetude, and are more honoured in the breach than in the observance ; and it may be open to question how

Archbishop has no more power to prohibit a layman whom an incumbent asks to read the lessons than to prohibit a particular singer or reader of the Psalms, except that if either of them does so in such a way as to disturb or offend the congregation, he could be stopped, *i.e.* monished not to do so, with costs, by a prosecution in the ecclesiastical court. The notice of the older Prayer-Books was altered in 1662 from 'the minister' to 'he that readeth,' obviously to allow what had long been the practice in sundry places or, if not, to allow it for the future."

far this canon precludes ministers in the present day from allowing the first part of the Litany to be said or sung by unordained persons. At any rate if the strict view of this canon, and of the enactment in the Act of Uniformity above referred to, is to be accepted as correct the breach of the law in departing from it is committed by the clergyman who makes default in performing his prescribed duty rather than by the layman whom he permits to relieve him of it. The passage in the Preface to the Ordination Services which touches upon the matter is that which declares that no one shall be suffered to execute any of the functions of a Bishop, Priest, or Deacon except he be duly ordained. This prohibition throws no light on what are to be considered the exclusive functions of persons in Holy Orders.

On (2) the power of laymen generally to preach in consecrated buildings, Sir Arthur Charles apparently considered the Twenty-third Article of Religion to be conclusive against it. That Article is as follows—

“ It is not lawful for any man to take upon him the office of public preaching or ministering the Sacraments to the congregation before he be lawfully called and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have public authority given unto them in the congregation to call and send ministers into the Lord's vineyard.”

The Article, we observe, does not define the manner of calling and sending preachers, but only describes the persons by whom they are to be commissioned. It would seem, therefore, that our Bishops, who answer that description, do not transgress its provisions when they entrust to certain lay readers the office of public preaching. The Regulations of 1905 prescribed that they should not deliver addresses in consecrated buildings during any of the appointed services of the Church. In some dioceses, including that of London, this restriction is construed as not precluding diocesan readers from giving addresses at the close of Matins or Evensong, since there is no intimation in the Prayer Book that a sermon then preached is a part of those services. But other Bishops consider that readers are debarred from preaching at that time as much as between the Nicene Creed and the offertory sentences in the Communion Office.

(3) The Article also bears upon the third head of our inquiry—the status of readers as to assisting in the Communion Office. The only question that could arise as to this would be respecting their



powers to read the Epistle and administer the Cup. According to the rubrics the second of these functions is to be performed by a minister, but the Epistle is expressly directed to be read by the priest. Yet in practice it is often read by a deacon ; and it may be argued that if this is lawful in spite of the rubric, there is no conclusive reason why both functions should not be exercised by a duly authorized layman. On the propriety or expediency of this, opinions may differ ; but readers clearly cannot at present perform either of these duties, since they are not included among those specified in the Regulations of 1905.

A review of the legal status of readers would be incomplete without a notice of the procedure by which they may be protected in the lawful discharge of their duties, or corrected if they exceed or abuse their powers. A reader can only exercise his functions with the consent of the incumbent of the parish ; but, having obtained that consent, he is entitled to the same protection from molestation in the rightful performance of his duties as can be claimed by an ordained minister. Any one who interfered with him would be guilty of " brawling." On the other hand, he would himself be liable to be convicted of that offence if he persisted in attempting to act without the consent and contrary to the directions of the incumbent. The procedure would not be so simple if having the consent of the incumbent he were to exceed or abuse the powers entrusted to him by the commission or licence of the Bishop. In that case his commission or licence would naturally be revoked, so that his status as a reader would cease. But in the present state of our Church discipline it is difficult to see to what further penalty or disability he would become liable except possibly a monition with costs, in the Ecclesiastical Court, as mentioned by Lord Grimthorpe in his letter on the reading of the lessons by a layman set out in the note above. The law would probably rather be put in force against the incumbent who was a party to his wrong-doing.

The present Bishop of Worcester in his *Lay Work and the Office of Reader*, which was published in 1904 (before the Report of the Joint Committee of the Canterbury Convocation), sets out the opinion of Sir Arthur Charles to which attention has been called, and adds, " I do not propose to discuss this legal question ; it would be quite unprofitable. A settlement is impossible without reference to the courts." With the Bishop's last sentence we must perforce

agree. At the same time, it will also, I think, be generally agreed that in existing circumstances a reference to the courts for such a settlement is neither probable nor desirable. For the present our readers, both diocesan and parochial, may well be content to rest, with a good conscience and a mind at ease, on the *quasi*-legal or *extra*-legal status accorded to them by the Regulations of 1905. When the Church acquires the powers of self-government for which we are striving, they will, no doubt, be placed on a more correct theoretical basis. Meantime one substantial improvement might with advantage be made in the situation. The Regulations are variously interpreted in different dioceses, so that the powers and functions of the readers are not the same throughout the country. It would be well if all our Bishops would put the same wide and liberal construction on the Regulations as, with such conspicuous benefit to the Church, has been adopted in the diocese of London.

P. V. SMITH.

