A HAPPY NOISE TO HEAR? CHURCH BELLS AND THE LAW OF NUISANCE

THOMAS GLYN WATKIN

In the July 1995 number of the *Ecclesiastical Law Journal*, Mr R. H. Bloor presented an interesting account of recent difficulties encountered by the parish church of St Mary's Belton with regard to the chiming of its church clock. In his article, 'Clocks, Bells and Cockerels', he took occasion to consider briefly the law relating to bells as a noise nuisance and usefully brought some unreported cases to the attention of readers of the Journal. He did not however consider one question which is, it is submitted, of peculiar importance to ecclesiastical lawyers, a question raised by the present author in a letter to *The Times* on 22 October 1994, namely whether the obligation of clerics to ring a bell under ecclesiastical and canon law can be a defence to a complaint of nuisance for the noise caused. Nor did he examine the differences which exist, particularly with regard to defences, depending upon whether the complaint is one of public, private or statutory nuisance. The present paper is therefore offered as a discussion of these points and as a wider review of the authorities relating to them.

BELL-RINGING AS AN OBLIGATION IN ECCLESIASTICAL AND CANON LAW

The Book of Common Prayer of 1662 provides as follows in one of its opening sections entitled *Concerning the Service of the Church:*

> . . . all Priests and Deacons are to say daily the Morning and Evening Prayer either privately or openly, not being let by sickness or by some other urgent cause.
>
> And the Curate that ministereth in every Parish-Church or Chapel, being at home, and not being otherwise reasonably hindered, shall say the same in the Parish-Church or Chapel where he ministereth, and shall cause a Bell to be tolled thereunto a convenient time before he begin, that the people may come to hear God's Word, and to pray with him.

The 1662 Prayer Book is annexed to the Act of Uniformity of that year, and thus became part of the ecclesiastical law of England and Wales.

In England, more recently, the Church of England (Worship and Doctrine) Measure 1974 has given powers to the General Synod to act by canon so as to make provision with regard to worship in the Church of England. This power includes the right to make provision, by Canon or regulation, for any matter to which the rubrics of the 1662 Prayer Book relate, other than the publication of banns of marriage, and these Canons and regulations take effect regardless of any inconsistency with the rubrics themselves. Acting under the 1974 Measure, the General Synod has provided in Canon B 11 OF MORNING AND EVENING PRAYER IN PARISH CHURCHES that:

> . . . Morning and Evening Prayer shall be said or sung in every parish church at least on all Sundays and other principal Feast Days, and also on Ash Wednesday and Good Friday . . .
>
> On all other days the minister of the parish, together with all other ministers licensed to serve in the said parish, being at home and not otherwise

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> reasonably hindered, shall resort to the church morning and evening, and, warning being given to the people by the tolling of the bell, say or sing the Common Prayers and on the appointed days the Litany.

These provisions, made under powers given by the 1974 Measure, are also part of the ecclesiastical law of England as well as being part of the canon law of the Church.

In much the same manner as in England Canon B 11 repeats the provision of the 1662 Prayer Book with regard to the clergy's obligation to say Morning and Evening Prayer daily and, in the case of the parish clergy, to do so in the parish church after tolling the bell, so also in Wales, following disestablishment, provision has been made by canon which in effect continues the canonical rule. The Order of Morning Prayer and the Order of Evening Prayer included in the Book of Common Prayer for use in the Church in Wales by virtue of the CANON FOR THE REVISION OF PART OF THE BOOK OF COMMON PRAYER (MORNING AND EVENING PRAYER) promulgated on 18 April, 1980 both provide that:

> *It is the duty of the clergy, unless they are prevented by sickness or other weighty cause, to say Morning and Evening Prayer daily, preferably in church after tolling the bell.*

The powers of the Church in Wales to pass such canons are obtained from the Welsh Church Act, 1914 which provides that the bishops, clergy and laity of the Church in Wales are permitted to hold synods and to frame 'constitutions and regulations for the general management and good government of the Church in Wales and the property and affairs thereof'.[1] Under section 3(1) of that Act, from disestablishment ecclesiastical law no longer exists as law in Wales; instead, by virtue of section 3(2), the then existing ecclesiastical law and the then existing articles, doctrines, rites, rules, discipline, and ordinances of the Church of England, with and subject to such modification or alteration, if any, as after the passing of the Act were duly made thereto according to the constitution and regulations of the Church in Wales, became binding on the members of the Church in Wales in the same manner as if they had mutually agreed to be so bound. The obligation to say Morning and Evening Prayer daily and to do so after tolling the bell is therefore part of the canon law of the Church in Wales. However, as far as the law of the land is concerned, it is a contractual obligation between the members, albeit an obligation that was initially imposed upon them by statute and which still reflects the terms of that statutorily imposed term.

In so far as it is an obligation upon the clergy to toll a bell to summon the faithful to hear God's word before Morning and Evening Prayer daily, it is necessary that there should be in every church a bell for them to toll. This too is reflected in the canons. In England, Canon F 8 OF CHURCH BELLS provides that:

1. In every church and chapel there shall be provided at least one bell to ring the people to divine service.
2. No bell in any church or chapel shall be rung contrary to the direction of the minister.

Both of these rules reflect the pre-existing canon law. Since before the Reformation, a bell to ring to church and to toll at funerals, together with the necessary ropes, has been part of the necessary equipment of every church,[2] and it was also well-established that the bell was not to be rung on other occasions without

[1] Section 13(1).

[2] Lyndwood, *Provinciale*, 250; *Pearce and Hughes* v. *Rector of Clapham*, (1795) 3 Hagg. 10 at 16, and *Fowke* v. *Berington*, [1914] 2 Ch. 308 at 347.

the express wish of the incumbent.[3] These latter rules represent the ecclesiastical law of the Church of England in 1920 and are still the relevant rules of canon law for the Church in Wales.

While it is clear that according to the relevant canons of both the Church of England and the Church in Wales, a bell is required in every church, it is equally clear that to satisfy the canonical requirements no more than one bell appears to be necessary.[4] What is also clear is that the sound of bells can be regarded by those within earshot as anything from melodious to intolerable. Even those who enjoy the sound of bells may find a peal at close quarters difficult to suffer.[5] In short, bell-ringing can be a nuisance. It is the purpose of this article to explore the question of whether the sound of bells rung in an Anglican church in either England or Wales can amount to a nuisance in law, and if so, what kind of nuisance.

Three types of nuisance will be addressed: public, private and statutory. It will be seen that there is no dearth of authority in relation to bell-ringing as a nuisance, but that the authorities do not address the position of the established Church directly, governed as it is by ecclesiastical laws demanding that bells be rung. This also poses difficulties for an accurate statement of the position regarding the disestablished Church in Wales.

BELL-RINGING AS A PUBLIC NUISANCE IN CIVIL LAW

With regard to public nuisance, *dicta* in what is perhaps the leading case of *Soltau* v. *De Held*[6] cast grave doubt upon whether a church bell could ever in practice be a public nuisance. In delivering his judgment in that case, Vice-Chancellor Kindersley said:

> 'I entertain . . . very great doubt whether it [the bell-ringing] be a public nuisance. I conceive that, to constitute a public nuisance, the thing must be such as, in its nature or its consequence, is a nuisance—an injury or a damage, to all persons who come within the sphere of its operation, though it may be so in a greater degree to some than it is to others . . . If, however, the thing complained of is such that it is a great nuisance to those who are more immediately within the sphere of its operations, but is no nuisance or inconvenience whatever, or is even advantageous or pleasurable to those who are more removed from it, there, I conceive, it does not come within the meaning of the term public nuisance . . . A peal of bells may be, and no doubt is, an extreme nuisance, and perhaps, an intolerable nuisance to a person who lives within a very few feet or yards from them; but, to a person who lives at a distance from them, although he is within reach of their sound, so far from being a nuisance or an inconvenience, it may be a positive pleasure; . . . I cannot assent to the proposition that . . . in all circumstances and under all conditions, the sound of bells must be a nuisance.'[7]

While it is doubtless possible to dream up an example of a village church standing amid a cluster of houses with no other habitation within earshot of the bell so that if the sound of the bell were a nuisance all the inhabitants would share the misery equally, such a scenario is very unlikely to arise in the real world. Vice-Chancellor

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[3] *Daunt* v. *Crocker*, (1807) L.R. 2 A & E 41.

[4] Vide Cripps, *The Law relating to Church and Clergy* 7th ed. by A. T. Lawrence and R. Stafford Cripps, (London, 1921), p. 405, where this is asserted without citation of any authority.

[5] The present author can testify to the truth of this comment. Although one who finds the sound of bells pleasing, when an undergraduate at Pembroke College, Oxford, he enjoyed, during his second year, a set of rooms at the top of the college tower, yards from the steeple of St. Aldate's Church in Pembroke Square. Bell-ringing practice on Monday evenings between eight and nine o'clock necessitated his vacation of the rooms and retreat to the Union. [6] (1851) 2 Sim. (NS) 133.

[7] Ibid., at 142–144.

Kindersley's doubts concerning whether the sound of bells could ever be a public nuisance appear therefore to be justified.

BELL-RINGING AS A PRIVATE NUISANCE IN CIVIL LAW

Private nuisance is a different matter. There is no doubt that the ringing of a church bell can be a nuisance at common law. One of the earliest authorities is the exquisitely named case of *Martin* v. *Nutkin*.[8] Dr Martin and his wife, Lady Arabella Howard, lived at Hammersmith in a house not far from the parish church. The bell of the church was rung every morning at five o'clock from Michaelmas to Candlemas, excepting holidays and the twelve days of Christmas. Lady Arabella appears to have enjoyed but poor health and the early morning bell 'much disturbed and disquieted' her. Accordingly, she and her husband entered into a covenant with the churchwardens, acting with the authority of the Vestry, under the terms of which the five o'clock bell was not to be rung during the life-times of Dr Martin and his wife and the survivor of them. In consideration for this agreement, the Martins agreed to erect a cupola upon the church and to install therein a clock and bell. The five o'clock bell was duly silenced for some two years.

It was then that a local ale-house keeper, Nutkin, was chosen as churchwarden. He got the Vestry to issue a new order, re-instating the five o'clock bell. Dr Martin sought and obtained an injunction enforcing the earlier agreement for the duration of the joint lives of him and his wife and thereafter for the duration of the life of the survivor of them.

Strictly speaking, this case has nothing to do with nuisance in the legal sense. It is rather about a contractual undertaking, for the breach of which an injunction was obtainable from Chancery. Nor does the case concern the ringing of the bell in accordance with the requirements of canon law. The five o'clock bell was obviously rung where in later times a clock would strike the hour, and it was the want of the more modern contrivance that the plaintiffs sought to remedy on their side of the bargain. Had their objection been to the incumbent's tolling of the bell for Matins, then the agreement would have been void for illegality at common law and no injunction obtainable had it been to cease the bell for Morning Prayer altogether, although there does not appear to be any reason why an agreement not to ring and say Matins until a later hour might not be valid and enforceable.

The same is true of the later case of *Hardman* v. *Holberton*,[9] in which the plaintiff, whose wife was ill and highly nervous, sought to restrain bells being tolled or rung at St. Peter's Church, Norbiton, so as to occasion any nuisance or annoyance to him or his family. The primary object of his displeasure was the chiming of the quarters and half hours, particularly between the hours of ten at night and six in the morning, by a clock recently erected in the church by public subscription. It was held that the annoyance to the plaintiff and his family did not amount to a nuisance. In any event, as with *Martin* v. *Nutkin*, the case is not concerned with the ringing required by ecclesiastical law.[10]

With private as with public nuisance, however, the leading case is *Soltau* v. *De Held*. If *Martin* v. *Nutkin* is a case with an exquisite name, *Soltau* v. *De Held* must rank as one of the cases with the most extraordinary facts. Mr Soltau, the plaintiff, took a lease of part of a mansion house in Park Road, Clapham, in 1817, and he lived there, other than for two intervals, throughout the period from 1817 to the litigation in question. The other half of the house was also occupied as a private

[8] (1724) 2 P. Wms. 266.

[9] [1866] WN 379.

[10] The same is true of a nineteenth-century American case from the state of Missouri, *Leete* v. *Pilgrim Congregational Church*, (1883) 43 Amer. Rep. 526, which is also concerned with the striking of the hours at night.

residence, but there was no party wall separating the two messuages. In 1848, the other half was acquired by the Redemptorist Fathers, a Roman Catholic order, who converted the ground floor into a chapel and appointed the defendant to be their chaplain. He erected a wooden frame on the roof of their part of the house from which a bell was suspended. This bell was then rung daily, Monday to Friday, on five occasions commencing at 5 a.m., each tolling lasting about ten minutes. On Saturdays the bell was rung six times and on Sundays even more often.

The Fathers acquired their part of the property in July and the bell was set up in August. In October, the plaintiff wrote to the order complaining on his behalf and on that of his neighbours and, as he put it, of the parish generally, of the annoyance the bell-ringing was causing. His mention of the parish is intriguing, as it suggests some anti-Roman Catholic feeling in the complaint, which needs to be borne in mind when considering this case, which comes from a time when Roman Catholic emancipation was yet a relatively recent occurrence and the Roman Church was actually in the process of restoring a hierarchy and territorial organisation within the country. It would probably be unfair, however, to suggest that any *animus* against the Roman Catholics was the motivating force behind the plaintiff's actions given the circumstances he and his family had to endure.

The plaintiff received no reply to his letter of complaint. Accordingly, at the end of the year he wrote to Dr Nicholas Wiseman, then Pro-Vicar-Apostolic of the Roman Catholic London District and shortly to become first Archbishop of Westminster, under whose jurisdiction Father De Held ministered. By the time of this letter, the Clapham chapel had been officially registered as a Roman Catholic place of worship. In the letter, the plaintiff recounted that he and his neighbours were subject to:

> 'a great inconvenience and annoyance from the loud and frequent ringing (often at unseasonable hours) of the large and harsh-sounding bell some time since erected upon an open frame on the roof of the said house. The practice we complain of is offensive alike to our ears and feelings, disturbs the quiet and comfort of our houses, molests us in our engagements, whether of business, amusement or devotion, and is peculiarly injurious and distressing when members of our household happen to be invalids; it tends also to depreciate the value of our dwelling houses. Under these circumstances, we trust that you will immediately take the present complaint into your serious consideration, and voluntarily redress the grievance, instead of constraining us to have recourse to the law, to abate what we all, from experience, deem a very grave, indeed, intolerable nuisance.'[11]

The letter led to a meeting in February of the following year, 1849, between the plaintiff's solicitor and the future cardinal's legal adviser, who also acted for Father De Held, a solicitor called Mr Harting. He sympathised with the plaintiff's predicament but assured him that the bell was only rung for public purposes of interest to the local Roman Catholic population. In future, out of deference to the plaintiff's wishes, the early bell would be rung at six o'clock rather than five. In addition, if there was anything else that could be done to meet the needs of the neighbours further, it would willingly be done, but regrettably there was nothing else that could be done.

A truce appears to have then ensued until May 1851 when a Roman Catholic church with a steeple was built adjoining the chapel, on ground which had been the

[11] *Soltau* v. *De Held*, op cit., n. 6 supra, at 134–135. The report is misleading with regard to Dr Nicholas Wiseman's status at the time of Mr Soltau's original complaint. Dr Wiseman was not appointed Archbishop of Westminster nor a cardinal until the end of September 1850. During 1848, when Mr Soltau complained, Dr Wiseman was Pro-Vicar-Apostolic of the Roman Catholic London District, with the episcopal title of Bishop of Melipotamus.

courtyard of the mansion house before its division into two messuages. Six bells were installed in the steeple, the size of which was to be described by Vice-Chancellor Kindersley as 'unusually large'.[12] The church was opened on 14 May. The day before, the peal of six bells was rung several times; on the 14th itself, the bells were rung at intervals all day. Thereafter, the plaintiff appears to have suffered a nightmarish extravaganza of campanology, with the chapel bell being rung daily at 5 and 6.45 a.m., with a steeple bell taking over at 8.45 and being rung again at 6.45 and 7.15 p.m. In addition, full peals were regularly rung on Saturdays and Sundays, sometimes lasting for well over an hour.[13] This continued until, in August, he brought an action for nuisance at common law which succeeded, and he was awarded forty shillings damages with costs. Thereafter the ringing stopped until November, when the defendant began again to ring the bells on Sundays, threatening to ring full peals and on weekdays as well as Sundays. Mr Soltau filed a bill in Chancery seeking an injunction to stop the ringing altogether, or at least such ringing as was a nuisance to him and his family.

In his bill, the plaintiff maintained that the noise of the bells was such that neither he nor his family could read, write or converse in their house while it was ongoing, and that if the ringing continued, they would be forced to move, even though it would be difficult to sell their property in the circumstances and the value of it was bound to be diminished. The case was heard in Chancery on 9, 10 and 11 December, 1851, and Vice-Chancellor Kindersley delivered his judgment on 23 December.

In his judgment, as stated above, he doubted whether the tolling of bells could be regarded as a public nuisance, although he did not feel that the point actually fell for decision in the instant case. He was however equally clear that the sound of bells could constitute a private nuisance, and that in this case the bells in question, having regard to their number, size and proximity to the plaintiff's residence, certainly had. The inconvenience, he thought, was more than fanciful, and not a matter of mere delicacy or fastidiousness; rather it materially interfered with the ordinary physical comfort of human existence according to plain, sober and simple notions of living. He granted the injunction, but not to prevent the bells being rung at all—only to stop them being rung so as to occasion any nuisance, distur-

[12] Ibid, at 154. The sizes and weights of the bells are recorded ibid, at 137:

	cwt.	qrs.	lbs	Diameter	ft.	ins.
The 6th bell	9	0	20		3	3
The 5th bell	7	3	7		2	11
The 4th bell	6	1	3		2	9
The 3rd bell	6	0	20		2	7
The 2nd bell	4	3	9		2	4
The 1st bell	4	1	11		2	3
TOTAL WEIGHT	38	2	14			

[13] The plaintiff's complaint contains a veritable timetable of the ringing; it reads:
'The chapel bell was rung at five o'clock and a quarter before seven every morning; the steeple bell *(sic)* at a quarter to nine every morning, and a quarter before and a quarter past seven every evening. On the 13th May 1851 a peal of six bells was rung several times; on the 14th the peal continued at intervals during the whole day; on Sunday the 18th the chapel bell rang at five o'clock, the steeple bell at a quarter to seven, and again at a quarter to nine. The chapel bell again rung at half-past ten. A peal of chimes was rung at eleven, and, again, at a quarter before one; again at a quarter before six, and again at a quarter before eight. On Saturday the 24th May the chapel bell rang as usual the three times above mentioned, and the steeple bell twice, and, in addition, a peal of six bells was rung from half-past eight till a quarter to ten at night. On Sunday the 25th May the chapel bell was rung at two different times, and the steeple bell seven different times. On Monday evening, the 2d June, a peal of bells was rung; and on Saturday the 7th a peal was rung from a quarter to eight to a quarter to nine. On Saturday the 8th of June, in addition to the ordinary bells, the chimes were rung several times to nearly nine in the evening. The chapel bell and the church bells were, subsequently to 20th of May, rung daily, upon an average, as great a number of times as they had been rung upon the several occasions before mentioned, down to the time when the Plaintiff obtained a verdict in the action. . .' Ibid., at 135–136.

bance and annoyance to the plaintiff and his family residing in their dwelling-house. Indeed, he concluded:

> 'I cannot say that it is absolutely impossible that any one of these bells may not be rung so as not to occasion any nuisance or annoyance to the Plaintiff. It is possible: and, therefore, I do not think it right to say that none of the bells shall be rung again.'[14]

In argument for the plaintiff, it had been suggested that it was illegal for a Roman Catholic church to have bells at all. Vice-Chancellor Kindersley refused to consider this as it was not pertinent to his decision, for he said that Chancery did not issue injunctions for acts merely because they were unlawful. He did however comment forcefully on the argument raised by the defendant's counsel that the bells of a Roman Catholic church were no more a nuisance than the bells of a parish church. This argument the Vice-Chancellor rejected firmly. He pointed out that the places of worship of Roman Catholic and Protestant Dissenters were not, in law, churches. Only places of worship belonging to the Church of England qualified in law for that name. 'The law recognizes the bells as an appendage to a parish church,' he said, but it was not the case that 'this church [the Roman Catholic church] stands on the footing of a parish church, and . . . is as much privileged to and entitled to have bells whether they are a nuisance or not, as a parish church is'.[15]

In reading this, one is again reminded of the fears abroad in England at that time with regard to the restoration of the Roman Catholic hierarchy, and the resentments many felt that the Roman Catholics were being allowed to impose a territorial jurisdiction upon the land that was both an alternative to that of the established Church and in competition with it. Vice-Chancellor Kindersley appears to have been striking a blow against any notion of equality of standing as between the Roman Catholic jurisdictions and those of the Church of England. He also clearly suggested that an Anglican parish church is privileged and entitled to have bells regardless of whether they are a nuisance. This last point deserves comment.

It is clear from the decision in *Soltau* v. *De Held* that bell-ringing can be a private nuisance at common law. However, this leaves open the question of what defence, if any, a cleric of the Church of England would enjoy if the ringing complained of was that demanded by the ecclesiastical law, namely to call the parish to Morning and Evening Prayer. It is trite law that if statute has authorized a particular activity, there can be no liability for a nuisance caused thereby. This should not however be taken to mean that the activity may be prosecuted with complete disregard for the comfort of others, for if the activity could be prosecuted in a manner which avoided causing the nuisance, to prosecute it in a way which does so affect others might well be actionable, particularly if it were not unreasonable to expect the activity to be performed in a less offensive or completely inoffensive manner.[16] Thus, in a church with more than one bell, it is submitted that the ecclesiastical law would not justify the ringing of a full peal for Matins at an early hour, and there might not be justification for ringing a single bell at a very early hour if a congregation could conveniently be summoned at a later time.[17]

The unreasonableness of the hour would appear to have grounded the decision in the Australian case of *Haddon* v. *Lynch*,[18] decided by the Supreme Court of Victoria. Mr and Mrs Haddon were the occupiers of a dwelling situated only a

[14] Ibid., at 162.

[15] Ibid., at 160–161.

[16] Vide R. A. Buckley, *The Law of Nuisance*, (London, 1981) pp. 87ff.

[17] In this regard, parking restrictions in the vicinity of the church might be taken into account. For instance, if parking near the church were allowed before 8 a.m. and after 6.30 p.m., but not allowed between those times, this would militate in favour of saying the daily offices at times which would allow the faithful to arrive, attend and leave while the restrictions were not in operation.

[18] [1911] V.L.R. 5.

hundred feet from St Paul's Church of England, Caulfield, in the Melbourne suburb of Malvern. The church had been built after the plaintiffs had built their house. The church bell was rung on Sunday mornings at 7.30 a.m. for two minutes and at 8.00 a.m. for three minutes, as well as at other times on Sundays, between 7.00 and 8.00 a.m. on Saints' days and on Wednesday evenings. The plaintiffs complained that the early morning ringing disturbed their sleep and the ringing at other times annoyed them. At first instance, À' Beckett J. held that it was not exceptional to wish to lie in bed undisturbed at half past seven on a Sunday morning, and issued an injunction restraining the defendants from ringing the bell on any Sunday or public holiday before 9.00 a.m. The decision was upheld on appeal.[19]

The trial judge, however, went further in his remarks with regard to the ringing of church bells. He thought that 'noises caused by church bells enjoy no immunity from restraint as nuisances',[20] and that ringing an early morning bell was not a necessary incident of church life. 'The plaintiffs', he said, 'cannot be required to submit to the early bell-ringing as a necessary function. It is no part of the church service, no incentive to attend. It merely announces the time for attendance in a manner uncalled for in these days of cheap clocks and watches', and he held the early-morning ringing to be an unreasonable disturbance of the plaintiff's comfort.[21]

While the case appears good authority for saying that a church bell rung at an unreasonable hour may be a nuisance, it is submitted that À'Beckett J's general strictures with regard to the ringing of bells to summon people to church cannot be accepted. The question of there being a legal or canonical obligation to ring the bell was not argued before him or before the Court of Appeal, it merely being asserted before the latter tribunal by counsel for the defendants that 'The ringing of a bell is usual in the Roman Catholic Church and Church of England'.[22] The *dicta* in the case cannot therefore be readily treated as applicable to the situation regarding bell-ringing in the Church of England.

However, while it is clear that a Church of England cleric would have a defence to a complaint in nuisance concerning his ringing of the bell for divine worship, it is submitted that it is not a complete defence and that much would depend on time. the level of noise involved and the question of whether any nuisance caused was reasonably avoidable.

BELL-RINGING AS A STATUTORY NUISANCE

Noise is capable of amounting to a statutory nuisance under the provisions of section 79(1)(g) of the Environmental Protection Act 1990. To be a statutory nuisance, the noise must be emitted from premises so as to be prejudicial to health or a nuisance, in the sense of an undue interference with neighbouring occupiers' comfort and convenience. Local authorities are under a duty by virtue of section 79 to inspect the areas for which they are responsible from time to time in order to detect any statutory nuisance which may exist and must also take reasonably practicable steps to investigate any complaints of such nuisances made to them by persons living in their areas. As bell-ringing can be a nuisance at common law, it is clear that it may also amount to a statutory nuisance.

Under section 80 of the 1990 Act, where a local authority is satisfied that a statutory nuisance exists, or that one is likely to occur or to recur, it is under a duty to issue an abatement notice which can impose requirements concerning the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence. In relation to bell-ringing, therefore, a local authority could ban or restrict the ring-

[19] Ibid., 230.
[20] Ibid., at 10.
[21] Ibid., at 11.
[22] Ibid., at

ing of bells in a place of worship not belonging to the Church of England. A question remains, however, as to what extent the requirements of the ecclesiastical law would prevent ringing the bell for Morning and Evening Prayer by a cleric of the Church being banned or restricted.

To be a statutory nuisance, the noise caused by the bells must be such as to constitute a nuisance at common law.[23] Provided the level of noise is such as to be a common law nuisance, it is not necessary to show that a civil action would succeed. This means that provided the level of noise is sufficient, the local authority could issue an abatement notice even if, at common law, there would be a valid defence.[24] However, it would appear that only common law defences are thus excluded, that is those arising from a duty owed in tort or contract;[25] there is no suggestion that a statutory duty would not continue to constitute a valid defence against the service of an abatement order,[26] Therefore, it would not be permissible to attempt to ban a cleric of the Church of England from ringing a bell for Morning and Evening Prayer altogether, or to attempt to restrict such a cleric to ringing the bell at times or in a manner which were inappropriate in that they rendered the ringing nugatory. It would, however, probably be permissible to restrict the cleric to the use of one bell, or to prevent ringing which involved the perpetration of a nuisance which was avoidable without prejudice to the fulfilment of the cleric's obligations under the ecclesiastical law.

POSITION OF THE CHURCH IN WALES

The disestablished Church in Wales clearly cannot be in a better position than that outlined above in relation to the Church of England. The position of clerics in Wales would indeed have been identical to those of their English brethren prior to disestablishment. The question now is whether disestablishment has worsened the position of the Welsh Church in this regard, and in particular whether its standing in relation to bell-ringing has been reduced to that of other Christian churches or to similar summonings among adherents to non-Christian faiths.

The key question is whether the Welsh Church continues to enjoy any benefit from the fact that a canonical duty exists to ring parishioners to Morning and Evening Prayer. It is clear that prior to disestablishment, that duty was part of the ecclesiastical law applying to Wales, so that if the level of noise caused by ringing one bell at appropriate times for those purposes unavoidably caused what would otherwise have been a nuisance, the cleric would have had a valid defence to a civil action. The problem now is whether the abolition of ecclesiastical law in Wales has changed this, and in particular whether this has an impact on the Church in Wales' position with regard to statutory nuisances.

Technically, the canonical duty of Church in Wales' clerics to toll a bell for the daily offices is now a contractual obligation, binding upon them by virtue of their consent to accept and be bound by the Constitution of the Church in Wales, which

[23] Unless it is prejudicial to health, in which case a common law nuisance need not be proved. Bell-ringing is more likely to be injurious to comfort and convenience than to health, although the *Leicester Mercury* of Thursday, August 4th 1994 contained a report under the headline 'Bells killing me off' –claim' in which it was alleged that persistent bell-ringing from a nearby church aggravated a disabled war-pensioner's ulcerative colitis. Mr Soltau had indeed claimed that his daughter's health was suffering as a result of the family's experience, and the plaintiff's wife in *Hardman* v. *Holberton* was also described as ill and highly nervous. Both plaintiffs might fare better under the modern law relating to statutory nuisance. I am indebted to Miss Sarah J. Thomas of Leicester City Council's Legal Services Department for the report from the *Leicester Mercury*. A discussion of the specific problem of church bell-ringing as a statutory nuisance from a planning and environmental standpoint, together with further discussion of the health question, can be found in Sarah Thomas and Thomas Glyn Watkin, 'Oh Noisy Bells, Be Dumb', (1995) *Journal of Planning and Environment Law* 1097–1105.

[24] Vide *A. Lambert Flat Management Ltd* v. *Lomas*, [1981] 2 All E R 280.

[25] Ibid., at 285.

[26] Appeals are made to the Magistrates' Courts under section 80(2).

includes the canonical rules inherited at disestablishment and not subsequently repealed. However, the contractual obligation is a legal duty, and moreover a duty inserted into the contract by the provisions of section 3(2) of the Welsh Church Act, 1914, which imposed the previous ecclesiastical law of England and Wales upon the members of the new Church in Wales as though they had agreed to be bound by its terms. In effect, although the *Book of Common Prayer for use in the Church in Wales* has repeated the requirement, there has been no material alteration to the substance of the obligation implicitly imposed by statute. It is therefore pertinent to ask whether in that case clerics of the Church in Wales may still claim the statutory defence. If they may, then the position of the Church in Wales is the same as that of the Church of England. If they may not, then the Welsh Church is in no better a position with regard to bell-ringing than that of other Christian and non-Christian places of worship.

The reality however is that the Church in Wales is in a unique position, because its clerics are under a contractual duty which has been placed upon them by statute. While it has been stated in terms that common law defences arising out of duties in tort or contract will not prevail against a complaint that an activity is a statutory nuisance,[27] it is likely that defences based upon statutory obligations remain good. In the absence of a specific test of this issue in the courts, it is submitted that it is not possible with any confidence to answer the question of whether they are justified in ringing a bell at an appropriate hour and in a reasonable manner to summon their parishioners to Morning and Evening Prayer even if the level of noise involved causes an unavoidable nuisance to the comfort and convenience of some occupiers within earshot. Much the same would be true of their liability in an action for private nuisance, although there the nature of their obligation might possibly make the task of justifying their position less onerous. A complaint of public nuisance is as unlikely to be sustainable in Wales as in England.

CONCLUSIONS

The following conclusions can be stated in relation to the question of whether bell-ringing by a church is a nuisance in English law.

1. The noise of a bell or bells being rung is not a nuisance on all occasions.

2. It is very unlikely that bell-ringing can ever be a public as opposed to a private nuisance.

3. Bell-ringing can be a private nuisance and/or a statutory nuisance if it affects the reasonable comfort and convenience of the occupiers of neighbouring premises.

4. Notwithstanding conclusion 3 above, the ringing of a bell by a cleric of the Church of England in fulfilment of the duty to summon parishioners to Morning and Evening Prayer, or the tolling of a bell for a funeral in the parish, cannot successfully ground either:

(a) a civil action for private nuisance;
(b) a complaint of a noise nuisance under section 79(1)(g) of the Environmental Protection Act 1990;

provided it is not possible to fulfil the obligation properly without causing a nuisance.

5. Clerics of the Church in Wales may or may not enjoy the same protection as those of the Church of England, depending upon whether the courts treat their obligation to toll a bell for the daily offices as equivalent to a statutory obligation because it was originally imposed upon them by a statute at disestablishment, or

[27] Vide *Lambert* v. *Lomas*, op. cit., n. 24 supra, at 285 per Skinner and Ackner JJ.

whether they treat it as a contractual obligation because the statute imposed the obligation as part of a contract binding upon all members of the Church in Wales as though they had agreed to be bound thereby.[28]

[28] An alternative view of the canon law of the Church in Wales presents it as a form of delegated legislation, vide David Lambert & Norman Doe, 'The Status and Enforceability of the Rules of the Church in Wales', in Norman Doe (ed.), *Essays in Canon Law: A Study of the Law of the Church in Wales* (Cardiff, 1992). The argument is however very difficult to accept as it contradicts the express provisions of the Welsh Church Act, 1914, section 3 (1).

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