

De Sepultura (No date)

Sir Henry Spelman

Transcript

British Library, Additional MS 22591, ff. 324r–331v

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De Sepultura Collected out of the Comon lawes by S[ir] He[nry] Spillma[n] Knight

As it is A worke of the Lawe of Nature and of nations of humane and devyne Lawe to burye the Dead Soe it is to administer that w[hi]ch necessariye conduceth to it/ The Place & office of Buriall/ yf A Man were soe ympious as not to afford itt: the Earthe to shew his shame will doe itt/ shee will open [th]e powers of her Bodie and take in the Blood: Shee will send Forth hir Children the wormes to bringe in the Flesh of their Brother and with h^er Mantle the Grasse as w[i]th A wynding Sheet, Shee will infould the Bones and burye alltogether in her Bosome. Men (in passion) refuse oft Tymes to doe it to their Enemyes to wicked persons & Notorious Offenders, but shee as A Naturall Mother that can forget none of her Children, doth this For them all both good and badd, teaching vs thereby what wee should doe for our Brethren, & brandoning those w[i]th ympietie [th]at au[n]swereth w[i]th Cayne/ Am I my Broth[er]s Keeper

The dir[e]ct[i]o[n] of my Speech tendeth to the reproffe of a Custom growne vpp amongst vs Christians, not heard of as I suppose amongst the Barbarians selling of Graves, And the Dutye of Buriall wherein I desire a little libertie to expresse my selfe somewhat at large as being one of the Motives that led mee rather to this discou[r]se

There seemeth if not A warrant yet A p[re]cident For it in the Booke of Genesis Cap:23: where Ephron selleth a buryall place to Abraham, and St Ierome censureth Ephron very hardly touching that Matter, euen as thoughe hee had Comitted some point of Symonie or of greate ympietie, and sayth that for this taking of Monye for the Burying place, O the letter of perfectio[n] was Strucke out of his name and that instead of Ephron w[hi]ch signifieth perfect hee was afterwards called Ephrm that is vnperfect The Scripture I confesse maketh noe such menc[i]on, nor Josephus, nor anye other au[n]tient that I can finde, I blame not therefore Calvin; that hee accepted itt not butt for that hee sleighteth that Noble Father soe sleightly as to tearme it A very Toye; I hould [*Right margin:*Meras Unges] Calvin much inferior to Austen, yett Austen professed himselfe inferior to Ierome, where Ierome had I knowe not, all men take him For noe ymposter I suppose (and so might Calvin) that hee had it from the Rabbins, because he Entituleth that Booke of his, [*Right margin:*fol: 214: 6] questions and tradic[i]ons Hebracia in Geursuine but all are not of Calvins Mynd manye of the Fathers & Cou[n]celes do well accept it

For myne owne parte I inclyne w[i]th Calvin to [th]e excusing of Ephron For both hee and the Hettites as though it were against Nature to take anye thinge for the burying of the dead in their Soyle, gaue Abraham free Libertie not onlye to bury, but to doe it where he would even in the Cheiffest of their Sepulchers This Contented not Abraham hee would not onlye haue
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fructum rei the Fruition of buriall: but *Dominium loci*, the Inheritau[n]ce of the Sayle it selfe

To sell this I should thinke it Lawfull though not the other [*Left margin: Fi: de Relige Rt Sumpt funer{is} l: funeris*] in anye Case lawfull to sell the Patronadge of A Church, nott the presentat[i]on, Institut[i]on or Induction *Preciu{m} loci in quo humandus. Est* A man maye take by the Civill Lawe But there was a necessitie that Abraham must haue the verye Soyle p[ro]p[er] and solie to himselfe for the Circu[m]cized might neither dead or alive mingle w[i]th the vncircu[m]cized, as this daye the Christia[n]s not w[i]th the Infidells, the Faithfull not w[i]th the heritiques or excomu[n]icated persons, In this allsoe Ephron was contented to satisfye Abraham. And whereas hee requested noe more then the Cave of Matchepelah Ephron not onlye grau[n]ted him the Cave, but the whole Field allsoe wherein the Cave was & that as A Free guift, if Abraham would soe accept it, But Abraham refusing to haue it bought the whole Field and by right of Precedencie had the Cave w[i]th itt/ Nothing doe I see in all this but Noblenes and bountie in Ephron, nor anye Iust impedim[en]t whye hee might not at First haue demaunded the price of the Feilde much lesse whie hee might not take it being pressed vpon him aswell as Iramiath tooke more money of David for the threshing Floure where he was to build an Alt[a]r and to sacrifice vnto God, All this notw[i]thstanding because the scope of the Monye taken by Ephron was for buriall of the Bodye [tha]t then wanted it & not for [th]e Soyle of [th]e field but for [*Left margin: Acts :7: 16: /*] the Sepulcher as St Stephen testifieth Ierome vtterlye condempneth itt, and the rather p[er]happs for that Adam and Eve were said to be buried there For of such Monuments he was somewhat curious, yet did hee not soe much reprove this taking by Ephron as the Vice and Sinne of the Tyme in requiring and exacting money for buriall, w[hi]ch begin[n]ing then to creepe into the World, gaue the Church A iust occasion both to censure & condempne it by many Constituc[i]ons Cannons, and decrees wher of I will recite some w[hi]ch I conceaue are att this daye in for{ce} (as touching the Substance of them) in o[u]r Church though neglected and not observed

[*Left margin: Cannon 1:/*] Nereida A noble Woman complaining to Gregorye the Greate that Januarius the B[isho]pp of Sardinia would haue au 100s for the buryall of her daughter, Gregorye by A Decretall Epistle to him saith we haue vtterlye Forbidden this Vice in our Church , and doo not suffer soe badd A Custome should in any Case be vsurped

If Ephron a Pagon were so considerate as to refuse it howe much more ought wee to doe itt that are called Preists wee therefore Admonish that from henceforth none attempte this Vice of Covetuousnes in any Churches, Butt if att anye Tyme you permitt anye to bee buried in yo[u]r Church and that his next Kinsman or heires will of there owne accord offer anye thinge for lights wee forbid not that to be taken But to exact or aske any thing wee vtterlye forbid, least that (which were most irreligious) the Church p[er]adventure might be said to be sould (w[hi]ch God Forbid) and you allsoe to seeme gladd of mens deathes if you reape any Comoditie out of their Carkases

[*Left margin: Cannon 2:/*] But A blowe or two could not kill this Serpent for Iniquity hath manie heads some as it seemeth in the Cou[n]cell of Triburie *vtrum terra cumiferiata vendi possit pro Sepultura*^{wh}

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whether Monye might be taken for Graves in [th]e Churchyard The Councell answered noe *In Ecclesiastico namq[ue] etc* For it is written in Ecclesiasticus denye not Curtisye vnto [th]e dead for wee shall all dye

And agayne all thinges that are of Earthe doe returne to Earthe, Earthe whye sellest thou Earthe, remember [tha]t thou art Earthe, and thou shalt goe to Earthe, that thou must dye & death is coming towards thee and lingereth not, Remember that the Earthe is not Mans, but as the Psalmest sayth the Earthe is the Lords and they that dwell therein, if thou sellest this Earth thou art guiltie of invading the goods of another, Thou hast received it freely from God, geue it freelye for his sake, Wee therefore absolutely forbidd all Christian people to sell Earthe for the dead and denye buryall due vnto them, vnlesse the kindred or Freindes of the dead p[er]son (in the name of the Lord & for [th]e rede[m]ptio[n] of his Soule will of their owne accord giue anye thinge

[*Right margin:*Cannon 3:/] The Councell of Nans recited by Burchard, & [th]e Cou[n]cell of Varens al[ia]s Vasens delivered by Gracian doe both in [th]e selfe same words thus condempe it Praeciend etc It is coma[n]ded saye they according to the Authoritie of the Can[n]ons, that for Graves and the buriall of men noe reward be Exacted vnlesse hee that is dead did whilest hee lived appoint some w[ha]t of his goods to be given to the Church in the Church yard wherein he is buryed or that those to whom the bestowing of his Almes after his death is com[m]itted will out of there owne accord give somew[ha]t of his goods but nothing maye in anye Case be Exacted by the Preists there or by them that haue the government of the place/ Itt is allsoe to bee eonstitu Com[m]aunded according to the Constitutions of our Elders that none vpo[n] anye Cause be buryed in the Church but in the yeard Poarch or Vault in the Church

[*Right margin:*Cannon 4:/] The Councell of Taures vnder Alexander 3: *Cap non satis*. Sayth for Sepulture and receaving Nurture and Oyle, let noe man attempt to receave any kinde of Reward, nor to defe[n]d his Offence therein, by colour of anye kinde of Custome, for the length of Tyme doth not dyminish Synnes but increase them, It is true [th]at all these were but Provinciaall Synods & constituc[i]ons yet their Iudgements did determyne this pointe to be a greivous Synne, and seemed to bee so Orthodoxall that they are since take[n] into the Bodye of the Comon Lawe, and nowe as Powerfull generall and obligatorie as the other parte thereof, But we will rise higher and see what generall Cou[n]cells haue conceaved and declared herein

[*Right margin:*Cannon 5:] The 12: general Cou[n]cells wherein both the Church & Greeks and Lattin were assembled by the same Alexander at Latterane in the yeere 1180 cap: *cum in Ecclesia Corpore* sayth, the burying and selling that is reported to be in some Churches is too horrible as that some w[ha]t is required for installing Bishoppes Abbotts and all kinde of Ecclesiasticall p[er]sons in their Seats for inducting Preists into their Churches, and for Sepulture & Funerall Rights, For the benediction of the Marryed Couple and for other Sacraments. verilye manye thinke it Lawfull because they sup pose the Law of Custome hath gott authoritie by long continua[n]ce and considering that offences are soe much more greevius By howe much the Longer they haue insnared the wicked Soule of Man.

Therefore least theis Things should be done hereafter we

streightly

Streightlie forbiid anye thinge to be Exacted either for induc tinge Ecclesiasticall persons to their Seates or for institutions of Preists by buryall of the dead, or benedictions of them [tha]t marry or other Sacraments either conferring or Collated. But if anye man shall p[re]sume to doe contrarye lett him knowe he hath his p[or]tion w[i]th Geheryi, that is that he standeth accursed (as the Glosse interpreteth it) that he is A Symonest

[*Left margin:*Cannon 6:/] The next generall Councell. A verrye great one in [th]e same place vnder Innocentius 3: Anno comtynueth [th]e same p[ro]hibit[i]on touching buryall Fees, but because the former brydleth [th]e Clergie in taking that was not their due, this curbeth allsoe the perv[er]snes of the Layetie w[i]thoulding their Iust duties the wordes bee theise *Ad Apostolicam* etc It is com[m]on to the Apostolique Eare by freque[n]t Relation that some Clarks by burying the dead and blessinge the married Couple doe exact and extort Mony, and if in chance, that their Covetuous desire but not satisfyed they fraudulently alleadge some fayned impediment

One the other syde, laymen leavened w[i]th Heretiques Pravitie vnder the pretence of Canonically pietie doe endeavour to breake a laudable Custome brought into the Church by A godlye devotio[n] of the Faithfull, heerevpon wee forbiid all Exactions to bee made & Com[m]and all godlye Customes to be observed that Ecclesiasticall Sacraments be freelye conferred, but that they w[hi]ch doe maliciously endeavour to chang a laudable Custome maye vpon knowledge of the Matter be suppressed by the Bishopp of the place note that the Customes exacted by the Cannons must be godly & laudable/

[*Left margin:*Cannon 7:/] As for the Abolenda w[hi]ch aymeth cheifelye at those whoe like the Mouncks of Mounte Pessulau will not suffer the ground too be broken before they be payed for the grave, I purposed to passe it over supposing none that serveth in the house of God to bee soe Covetuous or Cautelous as not to staie for his mony till hee had delivered his Ware, but in the meane Tyme A complaint was brought vnto vs, of A Churchman (since deceased) & his Clarke [th]at came together to one of his p[ar]ishe whoe was then newlye dead and speaking w[i]th the Executor would not suffer the Bodye to be brought out of the house till he had 14: pounds paid, and the p[ar]ish officers according to the bill of p[ar]ticulers then shewed vnto them, nor could the Executor compound w[i]th them for anye abatement more then 10s in the Clarkes share, and payed them therevpon £13 10s Against such among other is the Cannon vnder the Rubricke *terra Caemite riata pro Sepultura vendi non debet in the words Abolenda ea consuetudinis perversitas* etc There is growne vpp as is reported A perverse Custome that must bee abolished at Mou[n]te Pessuliau, where they will not suffer the grave to be digged open for them that dye, till there be A certeyne price for the grownd, wherein they are to be buried, payed vnto the Church, we Comau[n]d that you being Bishopp of the place doe p[ro]hibite the Clarks fro[m] exacting any thinge at all. In this case the Complaint was for exacting Monye before the Grave was opened, but the Cannon forbiddeth it both before and after

Nota (sayth the Glosse) *quod pro terra in qua Sepeliendi sunt defuncti nihil est exigendur decretal* Greg[ory] lib 3: T: D:39 de Parodiis 13: It might as the phrase is grande Canoueni p[ro]duce many other Authorities whereby this Sinne is vehementlye impugned and cryed downe, but I will not Ioyne those Constitutions w[hi]ch for the most parte are Nationall and provinceall w[i]th theise I haue recited being generall either by their birth as springing from generall Councells, or by Adoption as taken from

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Provinciall Councells and decrees into the Bodye of [th]e Com[m]on Lawes and made thereby as generall and obligatorye as the rest, w[i]th all the p[ar]ts of the Cannon Law that are not repugnant to the Lawes and religion of the Kingdome, or repealed by the Statute of Hen: 8: or of latter Tyme against papall vsurpac[i]on are still in Force (as I conceave) and as was lately seene in two greate cases wherein everye Corner of the Comon Lawe as well remote as obvious auntient as the latter were searched out, either pro or contra

As for the 30: Comissioners that by the Statute of Hen: 8: cap: 19: and 3: Ed: 6: cap: 11: should haue pruned the Comon Lawe & cutt of the vnnecessarye Brau[n]ches, Nothing was done therevpo[n] soe that it still remayneth as it was before, but admitt [tha]t neither these nor anye other positive Constructions extended to our Mynisters will they not bee A Lawe vnto themselves & abtayne from that w[hi]ch is declared to be wicked and uniuert, but soe many godlye men soe many Fathers Councells and decrees of the Church

Lett vs then consider the Cou[n]cells and Cannons that we haue recited, and see first what opynion they haue of monye taken for buryalls, And Secondlye how they censure & decree touching it

[*Right margin:*Cannon 1: Greg: /] First for their opynion they declare it to bee a Vice of Covetuousnes, A badd Custome that maye be said most irreligious as the selling of the Church A cause of ioye to the Person whe[n] men [*Right margin:*Regist: lib: Epist/ 2] dye and A reaping of Comoditie out of the dead carcasses

[*Right margin:*Cannon 2: concerning Generall Tribus ta:] 2 A discourtesie to the dead by him that must dye, A sellinge of Earthe by him that is Earthe, A selling of that is none of his owne Selling of that was give[n] freely, to give freely A denyall of Buryall

[*Right margin:* Cannon 2; concerning generall Latteran/] A Thinge to horrible that bringeth the p[ro]{co} of Geheryi vppon the Offender, that is the brand of Symonie (as the Glosse expou[n]deth itt) A curse and an vncleanenes & cause of sep[er]atio[n] fro[m] Como[n]n societie

[*Right margin:* Cannon ver Concerning Jucu[m] Cannon 5: conc general Lat /] Lastlye as Maladies are the Most greevius & contagious that continewe longest, soe they conclude this to be soe much [th]e more greevius, by how much the longer it hath continued and declare it to bee Abolenda *consuetudines peruersitas* the perversitie of A Custome it is to be abolished

[*Right margin:*Cannon 5: 11: Lib 3: 28: Cap:13/] I am loath to peruse these heauey Tearmes of Agravac[i]on yet they proceed not from mee but fro[m] the Clergie themselves aga[n]st the Clergie themselves es from the Bodye against the member Fro[m] the Fathers the docters of that Church & great gen[er]all Cou[n]cells against some private perticuler incorrigible Offenders

The some of their Censure and decree is this /

[*Right margin:* 1) cap:abolenda ver sepultur Col:1207:/] That nothing be exacted or required for any sepulture w[i]th wordes the Glose declareth to Comprehend the ground or place of buryall and the Ministrie of the preists or Personne about the same and in some of the Cannons it is soe Expressed/

[*Right margin:*(2) That all the Customes for siech taking are evill ympious & Nilde

[*Right margin*:(3:)] That the offence in taking is Symonye

[*Right margin*:(4)] That the Cognizance belongeth to the Bi[sho]pp of the place

That guifts of Pietie for the vse of the Church maye Not w[i]thstanding be taken

[*Right margin*:(5:)] That none shall be buried in the Bodye of [th]e Church

[*Right margin*:(6:)] There is A Fiction that Achilles fighting w[i]th Hercules and not able to resist his force, shifted himselfe into divers Formes thereby to illude it, Soe the Canonists trie manye Evasions to helpe theyre Master of The Clergie in this pointe of taking by distinguishing the places of buryall the persons [tha]t take

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the Tyme of taking and the manner of demaunding

For the place they saye there bee three Sortes, *Locus Purus, Locus Religiosus, et Locus Sacer*

[*Left margin:Locus Purus*] According to the Civill Lawe Locus Purus is that w[hi]ch is our seculer grownd & is never vsed for buryall nor having any kind of co[n]secratio[n]

To this they saye the Cannons doe not extend For that it is some private mans and the owner may if he will take monye for a grave For *Nemo tenet de Suo beneficium facere*, Noe man is tyed to giue his Land Grownd to Charitable vse

[*Left margin:Locus Religiosus*] Is that w[hi]ch is assigned to the same Office of Religion & nomina telye where the Bodye of A dead p[er]son hath bine buried, For by the verye buryall of the Bodye the nature of the Soyle is chaunged from seculer and in reverence of this new function counted to bee Religious, And now therefore by the Cannons Nothing maye be take[n] for anye more Graves there

Some such places (I suppose are about this Cittie adioyninge to Churchyardes for enlarging thereof For w[hi]ch the owners doe take a yeerelye Rent of the parrish that vseth it, letting it vnto them to sowe Dead mens Carkases in, as it were to sowe Corne, and like as the Carkasies should growe vp like the Fable of Cadmus and brings them a Cropp to paye the rent w[i]th

This the Cannons doe meerelye forbidd as doth all soe [th]e Civill Lawe, and Lawe of humanitie, the Fathers, the Councells, and the opynion of St Jerome in the Case of Ephron

For my owne p[ar]te I take it to bee a kinde of Vsurie to lett [tha]t for monye whereof the hyrer can make noe kinde of p[ro]fitt. It might bee said they might haue chosen when they First hireth itt whether they would haue vsed itt soe or not, And it is true but after [th]e thing is done, and the place become religious ground by beinge made A burying place now to lett it in [tha]t kind as I say against the Cannons

[*Left margin:Locus consecratus /*] Is that w[hi]ch by the devotion of the owner is settled vpon God and the Church for some devine and Ecclesiasticall Service and then Consecrated thereto by the Bi[sho]pp, and is thereby severed from humane propertie as be our Churches and Churchyards. The moore p[ro]p[er]tie whereof w[hi]ch wee call Fee Simple is sayd to bee in unbilus & obesau{nce} though the Person Patron or Ordinarie For necessities sake maye make a Conveyance of them, But to dispose them or anye p[ar]t of them contrarie to the will of the donor of the nature of the guift & the glorye of him that is the supream owner God

allmightie, as by thos Cannons, Sacriledge and extreame ympietie, there must therefore bee noe buying nor selling & in this Noe doubt the Canonist is right

Thus much For the place of Sepulture

Of the parties

Touching the Parties that take monye For the Office or Ministerie of buryall, they saye that the Cannons extend not vniv[er]sally to all Clergie men, but to such onlye as are beneficed, or haue {pecons} for doing the Church duties serving the Cure, not to those whoe are Sine titulo Sine Selario w[i]thout Benefice or Stipend, And that they maye take therefore what the[y] can gett, For it is inconvenient sayth the Glosse that A Clarke should sell his paynes having nothing [Left margin: *irec inconuenient qve cler: licet {}paras Suos cu[m] non her vnde vivat decr Greg: lib 5: 29/ver pro Exequiis /*] whereon els to live. The rest of the Clergie the[y] live vnder [th]e Cannons yet w[i]th such shelter and w[i]th soe manye starting holes as the Cannons maye playe vpon them but not hurte them for as Tyme changeth soe they change the Case observing A difference in taking monye before buryall and in taking after

To take aforehand (say they is vtterlye vnlawful for that

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ymployeth A Buying and Selling by Example of Tradsmen whoe First take their Monye and then deliver their Wares Butt *Expleto officio*, when the duetie is once performed they maye take what is voluntarielye given them w[i]thout daunger of the Cannons, which wee shall Further examine in the next p[ar]agraue yet marke Nereida Complayned that the Bi[sho]pp *velit Exigere* £100 of her for the buriall of her daughter w[hi]ch complaynt must needs be after the buriall it being in Sardinia, And St Gregorye writting from Rome or those parts, yet Expleto Officio the buryall beinge past Gregorye would suffer nothing to be taken, noe not vpo[n] volu[n]tary guifte to the vse of the Bi[sho]pp but for the publique vse of [th]e church. as for Lights etc Hee allowed that to be taken [tha]t was volu[n]tarily offered and noe other wise doth the Cannon *Precipiendu[m]* or third Cannon, The Second Cannon allsoe giveth libertie to offer somew[ha]t for the Soule of him that is dead, but nothing to be given for the grave

Of the Manner

The manner of taking is of three Sortes (Vizt)1: Exactio[n] 2: demaunding, and 3: voluntarye Guifte

Exaction is ordinarilye said to be A wringing of that w[hi]ch is due from the p[ar]tie, or of more then is due, like the Muncks of Mounte Pessulau to refuse to burye the Bodye till they had [th]e p[re]tended duties. Or els like them in the Cannon Apostolicum that alleadgeth fayned ympediments & excuses to rayse [th]e m[ar]ket by delaying the buryall or when the Buriall is past like Ianuarius [th]e Bi[sho]pp of Sardinia to vrge and insist vpon the demand These are sharp exactions but the[y] would includeth smooth Courses

[Right margin: *That Simonica firmit verb exigitur lib: 4: Etimologia et deuisio iuris viners Exposit Jo: Caluin ~~ab~~ abluhle legit /*] Lynwood expoundeth it to require or take A Nolenti of him that would not parte w[i]th itt Calvin sayeth that Hactantius vseth it for Convenienter postulare, John Beroinus that *Exigere est petere exactis est petitio* And that the exactores

tributoru[m] nere soe called Apetendis tributis w[hi]ch the Lexicon of the Cannon and Civill Lawe doth allsoe deliver. Soe that to exact is not only to wring itt from the p[ar]tie but to demand or require is to exacte

In this Mannor the First Cannon either vseth Symonically or complayneth of an Abuse in the preamble or p[ro]videth against another in the decree, To put it out of doubt the First Cannon vseth both the Wordes petitionere aliquod and exigi omnino prohebumus we vtterly forbidd anye thinge to be asked or exacted, And it setteth Exigi in the latter place as though Exigere were lesse then petere or (As Hactantius taketh itt) Convenienter postulare, Note allso that this Cannon was made against asking or exacting after the Buryall as before wee haue touched / All this notw[i]thstanding I must truelye confesse, For deale w[i]th Argus and Bryanus them [th]at haue all p[er]spiciencie and assistance that there is noe expresse worde in anye of those Cannons against giving or taking symplye thoughe I thinke there be Enough to satisfye indiffent Iudgm[en]ts.that if there be A default-fecte in them I haue helpe for itt at home in our owne Provinciaall Constitutions wherein A Senode at { } assembled by Richard Archbishops of Cant. I finde it thus {decned} vnder[th]e Rubricke Ne quid Exigatur pro Sacramentis conferendis adictum est etc

[Right margin: Statuimus ergo ut dexter /] Wee therefore Ordayne that from hence Forth neither for Ordina-}c[i]on nor for Chrisme, nor For Baptismee nor for [th]e Com[m]union, nor For Benediction anye thinge be exacted But [th]e guift of Christ be given w[i]th Free dispensat[i]on Soe that if they must be given freely, nothing suerlye must be taken for them

either

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either Ex obliquo or by evasion

It maye be sayd they require nothing by waye of price for the ground or Sepulture, For the 4: Cannon is vt nulla cuius qua[m] precii Exactio attenatur, but as A reward from the partie by way of gratuitie whoe knoweth not that preciu[m] signifieth A rewarde as well as A price And for myne owne parte I doubt not but that the Cannon doth soe intend itt yett to cleare the pointe the word of the third Cannon ~~doth soe intend it~~ are expresse vt in his numeris Exigatur that noe reward be required

I suppose by this Tyme the offenders in this kinde haue lost [th]e playne Feilds of the Cannons and take themselves to their last hope & Castle of refuge Custome and prescription where it now resteth to beate them out, Everye man knoweth that evill Customes are in their owne nature to bee abolished, and those that be good, if there be a positie Lawe against them, they are allsoe voyde the nature of this Custome by the Collection wee haue made out of the Cannons is not onlye declared to bee excessivelye badd: but by the great Generalls of Latteran to be verrye horrible, and consequentlye to bee abolished but being possitivelye against the Cannon it is in ipso loc directlye, and although there were noe Clause or provision in them soe too denounce them yett ad maiorem cantelam in the 4:& 5 Cannons doe vtterlye overthrowe that Custome and besydes doe brand it w[i]th this note of infamie the Elder the worse and the longer it hath co[n]tinued the more greivous

The Persons haue nowe A shrende Crowe to pull For the Canonist themselves will confesse all this to be true, what then remayneth w[i]th Achebous Seu verture dolis seu certo occumbere Corax, must nowe helpe them w[i]th A querke to cosen the Cannons and to slide

from them or they are vndone/ Well here John de Athen one of the Polestarrs of the English Cannonists lett him (saith hee) that asketh anye thinge in this Case take heed to himselfe for if hee aske and take it for his dutie, or for the ground, or for the Sepulture he is gone, For it is Symonie, and for prooffe thereof alleadge some of the Cannons wee haue before recited w[i]th diuers others and the opinion of Hostiensis

And sayeth Further that A Custome will then doe him noe good as appeareth by the Canon of Otho, w[hi]ch Hee is therein hand with And that of non Satis in the Extravagant by vs allsoe expressed But saith hee /if hee demaund when his dutie is done in this man[ner] for that everye one that dyeth or is installed hath vsed to giue so much to the Preist or Church, then he shall p[re]vayle and hath iustly required For confirmat[i]on whereof hee p[ro]duceth the resolut[i]on of Innocentius and other authorities, and that Hostiensis sayeth infallibly that this is true touching the duetie of the Layetie toward the Church insomuch as though the exhibition of the laye men tending to the over filling of the bellye of the Clarkes, yet it maye be demau[n]ded as hee noteth in the extravagant Fir Sunonica Jacobus, And Athen saith that hee beleeveth it to be true not respecting the Moderate gluttonie butt the right of the Church alleaging oth[er] authorities to confirme it Tit 1:

[Left margin: Linwood /] To the same purpose is the opinion of Linwood another Polestarre of our English Cannonists & w[i]th the same words in p[ar]te Tit Simonica cap:1

Sepulture (saith hee) must not bee sould & citing 8:9:2:5: Item quoritur p[ro] fo.vt Co: in sequentibus de Sepultura Ca. abolenda saith that it appeareth there in the Text and glosse that in A sacred place as in A churche or Churchyard nothing must be required for Sepulture noe nor yett for the Office of buriall as Barnard there noteth and this is true as touching his office because A Clarke by reason of his Office is tyed therevnto, butt itt is

otherwise

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otherwise if hee bee not tyed thereto by Reason of his benefice and soe that hee doth not contract to haue itt For then itt is Symony extra rod,ca:etc in tantum Secundium hosiensis et ca: nor satis yet the Glosse saieth in the End of the said Chapter Abolenda that though Clarkes maye not require anye thing for such sepulture, yet the Layetie maye be compelled to observe godlye and lawdable Customes, and marke according to the note of Hostiensis in the same Chapter that hee that requireth to haue the Custome p[er]formed to him must take heed to himselfe, For if he demaund itt For the Grounde or for his duetie, Hee is downe, and it p[ro] fiteth him nothinge to alleadge. Vt dicto capite Abolenda But if hee sayeth that for everye dead Bodye soe much hath beene vsually given to the Preist or to the Church then hee shall abtayne it as in Cap: ad Apostolicum extra eund[um] vide Glosse hic {sionileni} 13:42: Ite[m] queritus Linwood {vld} 201: Heere is A left hand waye to { epp } by all the Cannons lett vs Consider it maye be the Parsons, frame their Customes as they list

It is like A Protens or Hestian Ruler are they not tyed to the manner and Forme of Payment as they made it Figue & onlye vniversitie observacons lett them be well advised in lying [th]eir Customes soe least the Jurye Finde an ignoramus, It hath fallen on me to be an vnworthie Instrum[en]t of that most Noble and most gracious Com[m]ission of Exacted Fees and inovated Offices and thereby too haue notice by Certificate of diuers persons Viccars & Cheife Parishioners of most of the greatest parishes in London yet none of them hitherto to my remembrance haue made any such clayme nor knowe I how they should prove it if they

did, I will steale noe Coales nor prosecute this suite noe further For the duetie Love honor and greate observat[i]on I beare vnto them/ But I intreate w[i]th Vehemencie that they with the rest of their Coate will thinke Seriouslie of it, and if not allwayes yet when in their Sermons the[y] Justlye fall vpon the oppressions extortc[i]ons raysing of Rents etc by Landlords and laye men, For this Bird of theirs is A winged Sinne hatcht of late w[i]thin the Cittie but next allreadye into the neighbour Townes, and will shortlye flye (if the winge be not clipt in Tyme) over all the kingdome O lett not that [*Right margin:* Jeromie Cap 13: verse 15:] of Jeromie be once spoken of in this noble Cittie fro[m][th]e Prophets of Jerusalem, is wickedness gone For the into all the Land as this Synne and the Cannons lye Sore vpo[n] the Ministers for takinge monye for graves in the Cancell and for their paines in burying the Corps whersoever, Soe doe they vpo[n] some others whoe little dreame of itt, as the Church Wardens of the parishes that sell Graues in the Church and Churchyards like ware in [th]eir Shops, and when they thinke fitt make Lawes in their Vestrie For raysing the price, as they doe in their Halls for the price of their Wares, If they looke into the Third Cannon they shall Finde themselves there contayned vnder A Fayre Stile, Them [th]at haue the govern[en]t of the place meaning of the Church and Churchyard and Parrish Soe that though they be laye men, yet by misvsinge things of the Church they fall into the same Offence respectively that Churchmen doe, and haue their Portion assigned them with Gehezi (as in the First Cannon, I haue heard some of them answere, that it is noe benefitt to our Selves, It is good for the Parrish For the repaying the Church Bells or Steeple to help out some extraordinarye Charge that falls vpon the parrish

(And

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And it or) Guest house dynner

It is on Agape or Feast of love w[hi]ch noe man will require or gather grutch at our p[re]decessors did it before our Tyme & our Successors will die it when we are gone, All is done by an asse[m]bly of the Vesterye, by consent of the Masters and cheiffe of [th]e p[ar]ishe subscribed and testified vnder their handes, Well lett their Vesterye on gods name bee A Certificate for well ordering of the thinges of the Church it is fitt it should bee soe But lett it not be A Parliament 12: or 16: private persons (I will not meddle w[i]th their Trade or quallitie) should Change or abrogate anye superior constitutions much lesse that of Synods & gen[er]all Cou[n]cells nor to make Orders to binde like a Lawe the rest of the parrish that consented not

What they haue used to doe Tyme out of mynde I call into question, but these Vestures that w[i]thin these thirtye yeeres or thereabouts haue left there au[n]tient Forme supported by a late full prescription and continued to themselves A new societie, power and Jurisdiction over the Rest Countenanced by an Iust rum{ }t fro[m] the Ordinarye vnder the Seale of his Chancellor And newe things must haue newe names, Soe they are Comonly stiled selected Vesteryes, I see the Bi[sho]pps names are vsed in them whether w[i]th their assents and knowledge I am doubtfull / I assure my Selfe their Lo[rdshi]pps would doe nothing against the Lawe, and I vnderstand not by what lawe they maye at this daye erect suche societie, or endow then w[i]th such authoritie as is p[re]tended But to deale plainelye I thinke these Instrum[en]ts conferre more mony vpon the Chau[n]cellor then authoritie vpon the Vesteries, For by these that I haue seene the B[isho]pps and Chancelor graunted nothing to the[m], but to relating that they haue considered the Forme of a Vestrie desired by some of the parrish,

they allowe approve & co[n]firme itt, and yet noe other wise then *quantum in nobis est* as farr forth as lawfullye they maye and noe otherwise

Nor have they this shaddow of Authoritie noe otherwise then vpon Condition That they shall doe nothing that may trench vpon the iurisdiction or p[ro]fitt of the Ecclesiasticall Courte when they cann neither iustifie the Clayming of their Fees or duties either by the one or the other, And the Vesterie men p[er]happs maye be in daunger of {our} vnlawfull assemblie to chang {lawes} or to haue their offences screned very high if {seu[r]itie} should examy[n]e it

[Left margin: November 24: 1627:] Giue mee leave to p[re]sent vnto you what I finde in a vestery constitution latelye made and subscribed by [th]e person & Chu[r]ch Wardens w[i]th 23: more of that Assemblie, confirmed by [th]e Bi[sho]pp approved by his Chau[n]cellor declared to be A Lawdable Custome of that parrish , and in Testimonye thereof entred as A solempe Acte in the principall Registrie of the Lord B[isho]pp of the diocesse and fynallye ratified w[i]th the Chau[n]cellors hand & seale of Office I maye saye vide p[er]udintque videre, But here the p[ar]cells touchinge the Parsons and Church Wardens for the point in hand

In the Chauncell

Whosoever wilbe buried in the Chau[n]cell shall pay) agrem[en]t to the person as shall be agreed on betweene them)

In [th]e Iles of [th]e Chau[n]cell

To the Church Wardens For the ground - 1-6-8

To the person For enteiring the Corps - 0-6-8

In

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In [th]e Body of the Church

To the Church Wardens For the Ground - 1-0-0-

To the Person For entering the Corps - 0-6-8

In the Churchyard

To [th]e Parson for entering [th]e Corps Coffind - 0-2-6

To him in like Manner For everye) – 0-1-4

Child vnd[er] 7: yeers old vncoffind)

All those Fees double of everye stranger, heere I medle not w[i]th the Constituc[i]ons of Foure poundes to the person for A Pewe in the Chau[n]cell, nor of 15s: 20s: 40s: £3 10s For places & Pewes in other partes, but these and manye others of the like sort fall in our Certificate

In another Parrish I finde 6-8d to the Person For [th]e dutie of Buriall in the Church when himselfe doth it not but his Curate, whoe for his paynes hath by the same Certificate xs more beside other xs For A Sermon (though there were none) but to goe a litle backe to the First demaund touching burying in the Chau[n]cell w[hi]ch is not defuncte in quoto, but in positive

ex imperio [th]at whosoeuer will be buried there, shall Pay to [th]e Pers[o]n as shalbe agreed on

Itt is to be noted that there is noe Custome and soe consequen[tly] then whereas the Person thinketh the advantage lyeth on his syd to take what he listeth, hee is now excluded by all the Cannons from taking anye thinge at all, For the Buckler that should defend them is the Cannon ad Apostolum, and the breadth of [th]at extendeth not further then to protect them that fight vnder A Custome w[hi]ch allsoe must be pious and laudable otherwise it concerneth not any and soe consequentlye when they stand vpon Tearmes, & alleadge the Chau[n]cell to be their Freehold, and that they maye as freely dispose of it at their pleasure as Lay men of their Landes and fall into the foule pitt of Symonie if they were looked after

The graue is the onlye inheritance that wee are borne vnto certeynlye, It is the Inheritance w[hi]ch our Graundmoth[er] (Earthe) hath left to descend in Gravell kinde amongst her Childre[n], shall one Enter and hold another out, or drive him to paye A Fyne pro adenuda heredicate (as they saye in the Feodall Lawe or pro ingressit (as wee saye in the Com[m]on Lawe) is our tenure loose like a Coppihold ad voluntateni domini and not rather noble by Franke Almayne Free from all Payments and services, how doe the dead rest From their Labours if they be vexed with payments, howe goe they to their graves in peace if they paye for their peace Laborat alieno quidebito tenetur and his peace is not worthie thanks if he must paye for it

Hee paieth For his peace, if he paye for the place where his peace cannot otherwise be had, he payeth for his rest if he can[n]ot enioye it w[i]thout payment, hee payeth for his Inheritance if hee cannot enter into itt w[i]thout A Fyne pro ingressa his inheritance settled vppo[n] him by the great Charter Terra dedit Filliis hominu[m], A Royall guifte, But as it is vsed make Collacatu in ill distributed

The poore man alas hath nothing of all this for his porcou[n] but the Grave, and maye not nowe haue that vnlesse he paie

well

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Well for it, To whom should hee paye First Reason au[n]swereth if to anye to the owner of the Soyle, true, But the owner of [th]e soyle was the Founder of the Church, and hee out of pietie zeale and Charitie gaue the Church Freelye for prayer and the Churchyard free for buryall abs{ } ulli rotinimento w[i]thout any rent, any service any reservac[i]on nor could nor could hee if he would haue donne otherwise for the Cannons would not suffer him; nowe thoughe hee were the absolute owner/yett if he had reserved but A pepper Corne out of A grave, itt had beene not only voyde but execrable, A pepper Corne what talke you of A Pepper Corne, Noe grownde in the Kingdome is sould soe deere as A Grave, that little poore Cabinett that is not Comonlye above five Foote long and A Foote and halfe in Bredth where there is noe Roome to Stirre either hand or Foote [*Left margin:*St Bernard/] And the Roofe as St Bernard saith lyes soe lowe as it toucheth his Nose, This little Cabinett is sometymes in the Churchyard sold for xvi d to the poorest man, and sometymes for ii s vi d In the Churche it selfe sould for x s: xx s: xl s: 3£: 4£: 5£: yea and sometimes x£ And yett the purchaser hath noe assurance of it but constrayned to hould ad Voluntatem domini or as Tennant for vii or 10:yeeres w[i]thin w[hi]ch Terme hee is oftentymes turned out and another put in his Roome, and noe writt of quare diecit infra terminu[m] lyeth [*Left margin:*Note /] for him / Shall I tell

what I was ashamed to heare, A grave or burying place lett to Farme for xx s A yeere, the Rent duelye paid for divers yeeres and being then behind, the Person threat ned to vncase the Corpes by pulling downe the Monum[en]t if itt were not satisfied, and shame was soe farr from him as hee spared not to defend it even before the Commissioners to whom it was likewise testified, that another had made Fortie pounds of one grave in tenn yeeres, by Tenn pounds at A Tyme, Strang things to mee what to others I Knowe nott, but I suppose *Senectatis non exaudita Cathegis*, [th]e Eldest man living hath not heard [th]e like/

Is it not Tyme that his Ma[jes]tye should doe as he doth that like Josias he should reforme the Temple of the house of God, God be Blessed that putt it into his hearte, and graunt him well to finish [th]e Worke in hand, being soe Noble, Soe pious, and soe full of necessity

I saye the Church was Freelye given for prayer by [th]e fou[n]der and the Churchyard For Buriall, what reason then cann bee alleadged, whie the dead should rather paye then the living doe for goeing into the Church, or whie doe not the living paye aswelle for the one as the dead for the other

Alasse mortuo leoni Et lepores insultant A little Child maye pull A dead Lyon by the Beard, but the least dogge alive will turne againe vpon the tallest man I haue here a Fayre occasion to speake of another great abuse the extreame Exacting of Monye For Pewes, but I will hould mee to the matter in hand and for A Conclusion give mee leave to vpbraide o[u]r Ministers w[i]th the golden Edict of Agamemnon in Homer touchinge the slaughtered Troians, I will that, naught be taken From [th]e graue, [*Left margin:Hi{ } 7: Pag 126:/*] but the dead shall haue all free Buriall

O shame to our Religion that heathen Souldiers should bee more gracious to his Enemies then A Christian Minister to his Freindes and bretheren, but terra nuncce aetas etc

I am nowe ledd where I was loath to come to shewe the nature and penaltie of this Synne, but that nicenes is to late since John de Athen Hostiensis, divers Cannons and some former passaged haue allreadye soe manifestlye discovered

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to be Symonie vnder w[hi]ch Title it therefore standeth rebuked in the Bookes of Cannon lawe w[i]th this Censure and penaltie *Sicut Simonica ca: pestis etc* As that pestilent disease of Symonie doth exceed in greatnes all other deseases soe ymediatly soe sone as the signes thereof shall appeare by the relat[i]on of anye person itt out to be cast out and banished from the house of God, Soe Odious is the Contagion thereof in the Cannon Lawe as it receaveth all Cryminous and infamous persons to become Accusars even the bondman against his Lord, Itt induceth the suspenc[i]on irregularitie Exterminators Curses deprivat[i]ons and manye Penalties not put in execut[i]on

The conveyance and reformat[i]on thereof, as of all other Enormities in Church and Churchmen were au[n]tientlye in [th]e Clergy themselves till Hen: 2 whoe perceaving that manye horrible crymes Com[m]itted by the Clarkes were Either Smothered vpp v̄p̄ in secret or Smothered over in Examinac[i]on w[i]th some sleight punishm[en]t for Nothing in the Comon Lawe is mortall, hee therefore obtayned in this greate Councell of Claredon, to haue them tried for Capitall Matters before the seculer Iudges w[hi]ch first cutt [th]e Hamstrings of

Ecclesiasticall Iurisdiction, and became A perpetuall President For the Tamyng it afterwards in other members

For herevpon the Succeeding Parliam[en]ts from Tyme to tyme as the Found the Clergie either Sleeping or exorbitant in vsing their iurisdicc[i]on pulled some what A Consistario *Clerio ad praetorium* Regis From the Comon Lawe, And by litle and litle haue brought the greate Sea of their old Authoratie to a narrow Compasse, w[hi]ch if my Lords the B[isho]pps looke noe better to itt, will (I Finde) bee yett distracted and deminished/ They are nott Ignorant whatt hath beene attempted in Q[ueen] Elizabeth's Tyme & since, And that there bee about Foure hundred persons which obserue their Courses verie Strictlye / Theyr Lo[rds] trust their Chau[n]cellors, Comissioners, Archdeacons, Officialls w[i]th Canonically governm[en]t of their Flockes, and these in manye places desiring monye rather then Amendm[en]t, doe soe shaue and powle [th]e people that they crye the worke is verie greivous, And will (noe doubt) p[ro]duce some other reformac[i]on if it bee not (as I saye) helped by themselves in Tyme

[*Right margin:* Steephen Mepham Acch. Cant fa: Stratford in Sinod London. /] They were wont to limitt their owne Fees and their Officers in their Provinciaall Synods, as appeareth by diu[er]s of them, but their Successors kept them soe badlye that thoughe the Synod London in the yeere 1632: had given A good smart allowance For the probate and business of A Testament as xxs at least of the money at fyne for everie hundred pounds of the Inventorie, yett the Markett by H: 8: his Tyme was growne to that height that 1000 Markes were sayd to be exacted For the Probate and busynes of one mans Testament which gaue the Parlyam[en]t in the twoe and Twentyeth of the same king such discontentment as they would trust the Clergie noe longer to bee their owne Carvers, but made A spetiall statute in [tha]t pointe to bridle their Exactions, Nowe the Authoritie they had is gone by their Submission A[n]no 25: H: 8: And the Statute there vpon then made, Soe at this daye they haue noe Authority either by Diocesan, or Provinciaall Synods to sett any fees but in their Convocac[i]ons by Assent and Confirmac[i]on of his ma[aj]esty vnder the greate Seale, In w[hi]ch Casse none hath beene taxed since [*Right margin:* 27: Eliz: 1589:/] The said Statute, Till the 27: Eliz: And none touching anye

other

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other then Officers of Ecclesiasticall Iurisdicc[i]ons & Courts not Persons Vicars Mynisters, Churchwardens etc & not [*Left margin:* Anno 1597: Cap: 132:] otherwise, And in the Constituc[i]on of London 25: Oct: 29: Eliz: and primo Jacobi Regis, where the Lord ArchB[isho]p of Ca[n]terbury hath power given him to determine of some questionable Fees touching the said Officers but noe Further Soe that the Rates and Taxes of Fees of Persons, Vicars, Mynisters, Churchwarden[s] and the like w[hi]ch I haue often seene to be Cou[n]tenau[n]ced and authorised by the Ordinarye of the diocesse, his Chau[n]cellour or other Officers vnder their hand and Seale (as farre as my vnderstanding can discover) are w[i]thout suffittient Wareant, and against the Lawe

What Fees the Parson maye take

But when all is done, itt must be Forgotten [tha]t some things (doubtlesse) is due to the parson, vpon [th]e buryall of the deade, For whye els should divers Cannons p[ro]vide that

the Bodyes of those that dye be not carryed to buryall out of the parrish least the Preist should thereby loose what is due to him

And although the Cannon and Apostolicu[m] forbidd exacting of Monye For Buryalls, yet it p[re]serveth Godlye & Laudable Custo[m] in that kinde, and p[re]scribeth A Course for suppressing [th]e malline that shall attempt to breake them

[*Left margin:* De Corona nulit et 3: 138/] Turtulian maketh often Mention of oblacons for the[m] not onlye at the Tyme they dye. Aniveraries & p[ar]ticularlye of Husbandes For their Wives soe doth Cuperian in divers passages, calling them sometimes Sacrificiu[m], and Speaking of oblat[i]ons [*Left margin:* De Cattitnonage lib 3: Epist:6: lib:4: Ep: 5: lib:1 : Epist: 7 Lib:de Orig Templ Act 87: 6:] saythe That the Ministers had an Allowance out of them for their Mayntenance Hospinion therefore is deceaved that supposed them to haue their growth vnder Gregorye the greate, But in this doubtlesse he is deceaved, That Preists and Monkes leadinge the people on in A sup[er]stition of prayers and ablations for the dead rayسد thereby an Excessive Benefitt to themselves, for they made thereby the Place of Buryall w[hi]ch was publique to become theire owne in private, and then selling that for monye shew them selves more ympious then the Barbarious Ephron that freely offered Abraham his buryall place Feild

It is therefore considered w[hi]ch bee those Lawdable Custo[m]s that maye come w[i]thin the Protections of the Cannon, For they doubtlesse are in expugnable, though not ease to be expressed for they maye differ according as devot[i]on hath gotten them manye place of pareish, but be what they maye (I labor not in that) my drift is onelye to shewe, that they must not bee those w[hi]ch are now in use to take monye for the grave or Office of Buriall, for these cannot be said to be Godlye, and lawdable Customes Since so many Cannons haue declared them to be vicious, ympious, iniurious, and Irreligious too horrible and the more greevius by the Longer Custome and Continuance, And therefore damneth & Anulleth them by expresse wordes, how au[n]tient or generall Soe ever they bee, if you will putt mee to name such Customes as maye Seeme Lawdable and Canonically / I will p[re]sent you w[i]th that w[hi]ch Hostines, Athen, and Linwood, delivered on their Creditts to be authentically in the Parrish where it hath bine soe used (Vid[elice]t)

That For everye One that dyeth there Soe much hath vsuallie beene given to the Preist or Church This they say will hould out water, but as I said before I feare that noe one of our p[er]sons can Maynetayne this Forme

Another is that w[hi]ch wee call A Mortuarie w[hi]ch was thus paied, The lord of the Fee had the Best beast of the defunct by waye of Herriott For the Support of his bodye against

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Seculer Enemies, And the Parson of the Parrish had the second as A Mortuarye For defending his Soule against his spireituall [*Right margin:* Linwood 161: m Glosse f[ol]io: 15:] adversaries I knowe the Provincially and Lynwood following itt doth saye that the Mortuarie was given in recompence of p[er]sonall Tithes forgotten or omitted, But vnder Correction I doubt of that because of the au[n]tient Familiaritie of Wills, and by [th]e Cano[n] of the Synode of Exceter, it is expresslye directed, that in all of the[m] there shalbe A Speciall Legacye of somew[ha]t to the p[ar]son For Tithes and oblations forgotten or omitted, And

if A Mortuarie were for the same Reason than had the p[ar]son in many places severall recu[m]pences for one and the same Thing,

It were verie vnreasonable allsoe that A poore man having Nothing Tytheable but three horses should give the Second of the[m] to the p[ar]son For Tithes Omitted, Then hee whose Tythes are worth £40 or £50 A yeere giveth noe more (nor is it like an Herriott w[hi]ch by contract betweene the Lord and the Tenant was reserued vpon the Originall Graunt

[Right margin: 21: Hen: 8: Cap:6:] But the Statute of 21: H: Cap: 6 hath turned these kinde of Mortuaries into certayne Som[m]jes of Monye, according to the Value of the Estate of the Parrishioner deceased, and forbiddeth anye thinge to be otherwise taken either For Mourtuaries or Corps present, I w[hi]ch I conceave to be when Corps are carried throughe or into another p[ar]ish then where it dyed/

Other Customes there maye bee allsoe w[hi]ch [th]e Canno[ns] accompteth laudable, As where monyes were au[n]tientlye given, For Lights in the Church, or for praying For the Soule of the deceased/ The Person it maye be doth Enioye at this daye Not mentioning the Originall, and soe it behooveth him to doe, least the kinge be intituled vnto it by [th]e Statute of su[per]stitious vses, & itt maye bee that the Monyes now taken For graves was au[n]tientlie [tha]t same [tha]t was given for praying For [th]e Soule of [th]e dead

[Right margin:Page 65:/] For mr Foxe reciting some Lawes of Canulus hathe this, for one Pecuma Sepultura etc In English hee saieth itt is not meete and right [tha]t in Funeralls Monye bee given for opening the Earthe, if anye Bodie or Course be carryed from his owne parrish into another, the Monye of the Buriall shall p[er]tayne by the lawe to his Parrish Church

This lawe cometh home to the Pointe in hand & maketh it verie Materiall for the Parson, And therefore I blameth not if they laye good holie on itt as A Warrant of Antiquitie to shew both their right and their Custome. But you must knowe that this lawe was not written originallie in Lattine, but in Saxon & [tha]t the translators haue not delivered it Faithfullye, And it is thus, That itt must bee that the Soule shott (or money given For the praying for the Soule) be allwayes payed at the opening of the grave, And if the Corps be buried els where then in its owne parrish yett lett the Soule shott be payed to the Church to w[hi]ch itt belonged

It is taken Verbatim out of the Synode of Hauham houlde[n] by Alphage Arch Bishoppe of Canterburye, and Moeston Arch Bishoppe of Yorke, about Anno 1009: in the tyme of Kinge Ethelred, And now (A Seculer Parlyament (as I maye call itt confirmed by Canutus, That the old Lattaine Manuscript Cope of that Synode cleereth the question in theis words Chap: 14: Munero nec defunctorum Anнимabus congruentia puter inipendenter aporto, lett the Guifts that are given For the behoofes of Soules of the dead be paid or delivered at [th]e opening of [th]e Grave

This Cannon neither Comaunded anye thinge to bee paid for the Graue, nor yett for the Soule, but onlye lymitts [th]e tyme when that [whi]ch is given for the Soule should be paid, he therefore that translated Cornutus out of the Lattine did not only expresse

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itt, by pecunia Sepultura, Nor Mr Lambert whoe rather affected Eloquence then proprietie by pecunia Sepulphralis, But Mr Foxe most vnfaithfullye by Englishing the Lattine, It is meete and right that in Funerales that monie be given for openinge the Earthe as the lawe required that monye should bee payed For the graue, whereas that w[hi]ch it speakes of was onlye For praying for the Soule, w[hi]ch by the Cannons might lawfully be taken, and is that w[hi]ch they allsoe intend, should be payed vnto the Parrish Church of the deceased, when the Bodye is elce where burried, For soe the Au[n]tient p[er]aphna{ }icall Coppie of Camitus lawes doth expresse *Si quis Corpus parentis aut amici ex propria p[ar]ochia aliud porture ad sepulene parochia ad quam pertinent silicet redditus quod Ang{} vocant quod reote vsolui debet ad partum sepulchram*

Nowe it appeareth howe the Grave-Silver or Monye For Graues grewe vpp to be taken, and was first give[n] For praying For the Soules and such like, but that being abolished and given to the Kinge

The Parson itt seemeth taketh itt For the Grave, And to saye what I thinke doe now take that w[hi]ch was given for prayenge For the Soules vnder this Fee For the Buryall of [th]e Corps, And this For the Grave, besides for both of them, Butt I will Saye noe more

Finis

Other manuscript witnesses

- British Library, Additional MS 5495, ff45
- British Library, Harley MS 2208, ff. 167x–183x
- Beinecke Library, Osborn fb60, ff. 153x–175x
- Bodleian Library, MS Ashmole 1149, item 2, 2–11

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<https://mpese.ac.uk/t/SpelmanDeSepultura.html>