

Colonel Bingay's burden: the search for Chancel Repair Liability in the Parish of Goring

When a wealthy local landowner paid for the construction of a medieval church, as almost certainly happened in 11th century Goring, he would normally also give land for a churchyard, a rectory house and land for the rector's personal maintenance called the glebe. Responsibility for the maintenance of the church building came to be shared between the rector and his parishioners. The laity looked after the nave where they assembled for worship. The chancel, that area at the altar (usually east) end reserved for the clergy and normally separated from the nave by steps, an arch or a screen, was the rector's responsibility. To enable him to meet this chancel repair liability (CRL), the rector was granted one tenth (tithe) in kind of the produce of the parish. In this way CRL became inextricably entangled in all the later complexities of tithe assessment, tithe commutation, tithe mergers and land enclosure. But the CRL was always associated in English common law with rectorial land and never with a particular office-holder or individual. Land however, whether or not it had an attached CRL, is a commodity which can be bought and sold, donated and sub-divided.

Long before the Reformation, many monasteries and priories had acquired extensive tracts of rectorial land, mainly for its valuable tithe income. But the CRL came too. When those monastic houses were closed down in the 1530s, much of their rectorial land was acquired, by gift, sale and occasionally fraud by laymen who became known as lay rectors or lay impropiators. They were usually wealthy landowners who, like the monasteries before them, benefited from the tithe (or its later cash equivalents) but remained liable for the attached CRL. Over time, some or all of this land might be sold on and was often sub-divided into smaller parcels but so of course was the CRL that went with it. Further complexities were added by well over two thousand local enclosure acts which usually adjusted field boundaries to consolidate holdings and by so-called tithe mergers and re-allocations.

The ecclesiastical parish of Goring as it emerged from the middle ages covered an area of about 34,378 acres. Like the neighbouring parishes of Whitchurch to the south and South Stoke on the north, it stretched from the settled areas close to the river up to the more open agricultural or heath land higher up the Chiltern slope. Its western limit for the whole of its length is the Thames. The more irregular southern boundary meets the river just south of Hartslock Wood and north of Coombe Park.

The Gardiner family, lay rectors of Goring

Coombe Park was the estate of the Gardiner family. Samuel Gardiner had inherited the bulk of his wealth from his very rich uncle, the Bristol slave trader and merchant, John Weare. In the early 1790s Gardiner bought the manor of Whitchurch and what later became known as the Coombe Park Estate. There on the riverbank just downstream of his friends across the river at Basildon House, he built a home, very similar in its Palladian style but smaller, called Coombe Lodge. In 1819, he also bought the estate of Goring. Samuel Weare Gardiner, his eldest son, was born just two years later and although he never lived in the parish, he was the first lay impropiator or lay rector to be accorded both of those titles in the few surviving Goring church records from this period. Most of his personal links were with the adjacent church and village of Whitchurch, to both of

which he was a generous and popular benefactor. His eldest son, Charles (1849-1928), succeeded his father at the age of 17 in 1866 and, like his father was always acknowledged as the lay rector of Goring. However, unlike his father he chose to live in Goring, first at *The Temple* by Cleeve weir and later at a house called *Elmcroft* at the end of Croft Road.

Charles Gardiner played a very active role in the life and work of the village and the church until he moved to Devon in 1891. We owe the Gardiner playing field and much else to his generosity. He was particularly prominent in the planning, fund-raising and disagreements that accompanied the major re-ordering of the church in 1888-9. To quote the Vicar at the time, the lengthening of the chancel and the restoration of the 10th century apse was being planned 'by the Lay Rector's express desire (who defrays the cost of the Chancel extension)'. [On Charles Gardiner and the re-ordering, see *Goring and Streatley Local History Society Journal 14* (2012), pp.15 and 22]



The chancel of St Thomas' church after its lengthening in 1888-89 [GSLHS collection]

Gardiner always accepted the CRL that went with his extensive landholdings. After the chancel was lengthened in 1889, he took out an insurance policy with the Norwich Union to cover his CRL up to £5000 and paid the premium every year until his death in 1928. Shortly after that, the church authorities asked his Executors whether the policy would be maintained by Gardiner's estate. We must assume that their lawyers' reply was made in good faith but it had not a shred of legal validity. It asserted that the responsibility for the chancel had only been assumed voluntarily by the late Mr Gardiner as Rector 'but that there was no Rector now'. The Parochial Church Council (PCC) seems to have accepted this misleading information at face value and ever since 1930 has paid the annual insurance premium against the loss of, or damage to, the chancel.

The Parochial Church Council's responsibility

The realisation that CRL is attached to former rectorial land, not to former lay rectors, and

that it simply passes to any new owners of that land, did not dawn on the Goring PCC until the Second World War. And it came about because of two quite separate but ultimately linked events which took place in 1936. In that fateful year, a senior Canadian military engineer, Lt Col. Hubert Bingay DSO and his wife, Margaret, always known as Greta, bought for their retirement the house in Manor Road still called *Beckett* and lived there for the next 20 years. At about the same time, the Tithe Act of 1936 abolished virtually all surviving tithe rents and compensated rectorial tithe owners with Government redemption stock. A statutory Tithe Redemption Commission (TRC) was established with the daunting task of investigating and assessing the claims and obligations of all former tithe-owners in the whole of England and Wales. The Act left CRLs virtually untouched and one of the TRC's important responsibilities was to investigate and record the location and value of all surviving CRLs in every parish.

The first warning that the Commission had finally turned its attentions to Goring came in the form of a letter from the TRC to the PCC in mid-August 1939, just before the outbreak of war. The PCC was asked if it would be willing to display in the village for 28 days two copies of a blue official notice, headed *Chancel Repairs*, inviting all tithe-owners in the parish who had not already been approached by the Commission to consult a draft copy of a document called the Record of Ascertainments (RoA) which would follow shortly. The PCC did not even reply at first and had to be reminded. The Vicar's apology betrayed the widespread ignorance of such matters. He mistakenly believed that the CRL went automatically with the right to appoint to the living and he confused Charles Gardiner with his father. Neither the public notice nor the draft RoA, which arrived in October 1939, would have clarified matters for him. Both documents were expressed in dense legal jargon. The RoA, although only four pages long, listed the cash value of tithes agreed a century earlier by reference to the field numbers on the very large manuscript 1848 Tithe Map. But since this was in the safe of the old Midland Bank at the time, nobody was likely to be very much the wiser. The whole arcane business must have seemed almost surreal at a time when the country was frantically, and belatedly, preparing itself for total war. It is hardly surprising that nobody, including the Vicar and the PCC, paid the matter very much attention, even when the powerful Diocesan Board of Finance (DBF) became involved.

All that changed at the beginning of 1941 when a long letter from the DBF warned that the PCC would shortly be hearing from the office of the Queen Anne's Bounty (QAB) in London with important information on the findings of the TRC with regard to CRL. The letter ended by emphasising 'the importance of dealing promptly with this matter when the papers are received from the Bounty office'. They arrived in April 1941 under cover of a letter which claimed, rather optimistically, that they provided 'the basis upon which contributions may be sought from certain owners remaining liable for chancel repair and is therefore of great value to the parish. It should be carefully preserved ... Although repairs may not be necessary to the chancel for some years it is desirable that the owners remaining liable should as soon as possible be identified and their liability be made known to them, so that when repairs are required, the collection of the necessary contributions should be facilitated'. The PCC considered the matter at its next meeting on 14 May 1941 and remitted this important and complicated problem to a small sub-committee. Its unfortunate members were Mr Ambrose Dodd, Col. Bingay, the PCC secretary and the PCC treasurer.

Colonel Bingay investigates

Only the first two became actively involved. Mr Dodd, the churchwarden, seems to have been the bloodhound, out and about in the parish, talking to owners, discovering who owned what and which plots had changed boundaries. He then reported his findings back to the Colonel, who was the leader, spokesman, recorder, calculator and principal correspondent on behalf of the PCC with the various statutory bodies concerned. All this voluntary labour I have called Col. Bingay's burden and he carried it for the next four years with quite astonishing perseverance and patience, often in the face of unhelpfulness and confusion on the part of the authorities he consulted for guidance. He later admitted, with his usual understatement, that it had all 'entailed a very considerable labour both to understand what it was all about and to get out the details'. All that was on top of the other demands the war was making upon his time and energy. He had lost his only son to enemy action only the previous September and was very busy as the local Billeting Officer, as well as with other unspecified War Office duties that took him to Oxford once or twice a month. He also had family preoccupations as grandfather to his daughter's two children who were evacuated to *Beckett* throughout the war.

The best monument to the work of Dodd and Bingay's labour is the latter's meticulously organised collection of correspondence, researches and calculations, most of it copied in his tiny neat handwriting. Originally it would have been kept in the church but is now in the GSLHS collection. It contains copies of the complicated correspondence between the PCC and the TRC, DBF and QAB 1939-1945, a retrospective chronology with Bingay's pithy but revealing commentary and the voluminous fruits of the search to establish the location and extent of the surviving CRLs in the parish. Without this material, the PCC records deposited at Oxford make little sense.

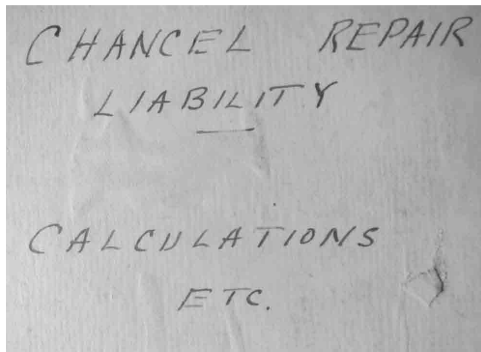
Right: Colonel Bingay in 1939 [John Martin]



From the start, the PCC decided not to hold the CRLs in reserve as a kind of contingency fund for use whenever the chancel needed repair, as the QAB seemed to be suggesting. As Bingay put it later on, 'to obtain the consent of 80 owners every time some repair is required to the chancel seems to me to be hopeless as a practical way of concluding affairs'. He and the PCC much preferred to try and persuade the lay rectors to escape from their liabilities by compounding them into a one-off lump sum which would be invested by the DBF and the income used to insure the chancel against loss or damage in the future. The TRC had already made a modest start on this process so there were some broad precedents to follow. Whichever of these two approaches was chosen, all research had to start with an identification of the rectorial land and for this the 1848 tithe map at the Midland Bank had to be examined along with the associated Tithe Award. The tithe map is more than eight feet long and with its eccentric scale of six cricket pitches (or chains) to the inch, is not easy to work with. Bingay once admitted to the PCC that it needed 'a clear office and an absence from interruption to make any progress'. He and Dodd soon discovered that more than 5% of the total land area of the parish was rectorial land and carried a CRL. A century earlier all of this land was owned

by just 13 lay impropiators. A few of them, like Samuel Weare Gardiner of Coombe Park, were wealthy men with extensive landholdings but some of the others were yeomen farmers or cottagers with very modest holdings. The process of sale and sub-division had obviously begun. Even so, a compounding scheme in 1848 would have been relatively simple to set up. A century later however, it was a very different matter. Mr Dodd's early enquiries discovered that the number of lay rectors had increased fourfold from 13 to 50 or 60. Later he had to revise his estimate to 'at least 80'.

Despite diligent enquiries over the next few years, Dodd and Bingay were never able to arrive at a reliable final list of owners with CRLs. Thirty-five were identified and named but the rest, whom they termed 'sub-division owners' were left to be identified later as time permitted. It never did. Bingay recorded the results of four years voluntary work in two key documents. One, on just four double sides of lined foolscap has the ponderous and oddly capitalised title *Detailed List of Fields in First and Second Schedules Compiled from Instruments of Apportionment with Tithe Map in custody of Midland Bank with approximate estimated Compounded Liability for Each Field and Notes of Positions of Fields on Tithe Map*. Curiously, the confirmed names of the contemporary owners were not given but can be found by cross referring to Bingay's meticulously indexed hardback ledger entitled *Calculations* etc. The two documents together are a sort of latter-day domesday and provide the local historian with a valuable comparative analysis of the ownership and description of land in the parish in the 1840s and 1940s.



Left: Colonel Bingay's ledger

Their compilation proved unexpectedly difficult. Bingay's grandson remembers him as a very patient man and his portrait confirms it. Nevertheless his CRL investigations must have tried him sorely at times. For example, the most fundamental question of what exactly constituted the chancel of Goring church became an issue between the DBF and the PCC. In 1936 the diocesan surveyor had suggested an absurdly low replacement

cost for what was about a quarter of the whole structure. Later it became clear that he had confused apse and chancel! Another difficulty was the lack of guidance on how the PCC was to set a fair value on, say, agricultural land, as compared with orchards or gardens or woodland. If the valuation was not seen to be fair as between one lay rector and another, it would be endlessly contested. As he argued later, 'it will depend entirely on the goodwill of the owners and any one of the main owners is in a position to wreck the scheme if he feels like it'.

The next nasty surprise came in November 1942. On the 17th Bingay sent the DBF a summary of their findings and said that they were now ready to open negotiations with the principal owners. 'Similar campaigns must have been planned and carried out and we would like advice as to how to go about ours. I'm sure that persuasive letters have been drafted that are both satisfying to a solicitor and yet understandable by the ordinary man. Can you help?'

The astonishing answer, six years after the Tithe Act, was that they could not. As Bingay put it after speaking on the phone to the DBF secretary, apparently 'no parish had got as far as we had and he had no typical letter available. I threw my hand in temporarily as there were things of more immediate urgency to get done'.

Fifteen months later the PCC decided to take the whole matter up again. In the continuing absence of any model letter, Bingay had carefully composed his own and sent it on 3 March 1944 to the Executors of the lay impropiator with the biggest CRL, the recently deceased owner of the former Gardiner estate, Coombe Park. The result was months of correspondence, meetings and phone conversations with the land agents. It was a clear warning of the problems likely to arise when all the smaller owners were approached, puzzled at facing an unexpected request for money. What must have been entirely unexpected at that late stage and with negotiations already started, was a short letter dated 6 March 1944 from Mr Watt, the secretary of the DBF. Almost casually and as if it were a helpful personal suggestion, he said that all of Bingay's complex calculations of the compounded liability of each plot, based on the 1936 figures provided by the TRC and QAB, needed to be increased by at least a third to take account of building cost inflation in the eight years since then. Bingay admitted to being 'rather dismayed'. Rather enraged would probably be nearer to the truth. As he put it later, just when it looked that the representatives of the principal owner had taken the bait, 'Mr Watt has thrown a spanner in the works'. Bingay, like the trained engineer he was, did his best to extract it. He argued as forcefully as the proprieties and his own natural courtesy allowed, that in the absence of any authoritative or statutory instrument to compel co-operation, the whole voluntary compounding scheme stood or fell by enlisting the goodwill of the owners. The very fact that the 1936 assessment did not reflect current costs was the best way to win that goodwill. 'I think we stand a very fair chance of getting [it]. But if we try to be too up to date we will be very apt to raise opposition in one of the main owners and then get nothing at all. I may say that this is not only my personal opinion but it is also that of the Standing Committee of the PCC. They feel that it would not be worthwhile to carry the matter any further if the percentage is added. May I now proceed with the original compounding scheme?' That letter, with its clear warning that patience was running thin in Goring, was sent at the end of August 1944. Unbelievably, it was ignored until Bingay sent a chaser eight months later. Even then there was no apology, merely a short insistence that inflation since 1936 must be allowed for at a rate of 3% per annum. The feelings when this arrived can easily be imagined. There is no evidence that Col Bingay even bothered to reply and who can blame him? He methodically sorted all the evidence he and Mr Dodd had so laboriously gathered over the previous four years, filed it away in the vestry and returned the tithe map and Award to the Midland Bank. Later, all these precious documents found their way into our Society's archive, where they have remained readily available to guide Bingay's 21st century successor when the whole thorny question resurfaced once again.

Chancel Repair Liability today

CRL had been confirmed in 1925 to be an overriding interest in common law, which means that it takes precedence over all other claims on a piece of land, whether or not it is formally recorded at the Land Registry or in the deeds held by the owner. Many, probably most, owners of former rectorial land, then as now, remain blissfully unaware that their property

carries a legal liability to fund the repair of the chancel of their local church at an unknowable cost which in some circumstances might be more than the value of the land carrying the CRL. This nightmare became a reality for one unfortunate couple. In 1994 Gail and Andrew Wallbank, the owners of Glebe Farm at Aston Cantlow near Stratford-on-Avon, received a formal notice from their PCC requiring them to fund the repair of the dilapidated chancel of the ancient church next door. They disputed the liability and in the ensuing legal proceedings that went all the way to the House of Lords, lost the case. At the end the Wallbanks faced a bill of nearly half a million pounds that included legal costs as well as those of chancel repairs. The government with the advice of the Law Commission was left to sort out a law which Gail Wallbank not unreasonably, described as ‘fundamentally flawed and morally indefensible ... a medieval legal mess’.

The simplest solution would have been the legal abolition of CRL. Its original rationale had finally disappeared in 1977 with the premature winding-up of the elaborate tithe-annuity scheme set up in 1936. To most it seemed arbitrary, archaic and unreasonable. Abolition after due notice was favoured by the Law Commission, the Law Society, a majority in Parliament and even the General Synod of the Church of England. Nobody in the Church could be comfortable with the hostile publicity generated by the Wallbank case and particularly the charge that the Church had put the welfare of a building before the teachings of Jesus. There were, however, some major difficulties in the way of CRL abolition. PCCs have a statutory responsibility to maintain their ancient churches. Nearly half of all Grade 1 Listed buildings are churches. They are the glory of the English village because of their age, significance and beauty but the disproportionate cost of maintaining such ancient and often fragile structures falls largely on the voluntary giving of their congregations. There is no political appetite to change this for any scheme involving state funding from taxes, as in some other European countries. If CRL was simply abolished by statute, the Church of England would be deprived of an enormous and inflation-proofed asset. One has only to stand at the chancel step in Goring church facing east and look up at that long, lofty and complex roof to get a sense of the likely cost of replacing it and the massive walls which support it. Then multiply that imaginary cost by the 5,200 other pre-Reformation parish churches in England and Wales and reflect on the extent of the estimated four million acres of land carrying a CRL. Legal expropriation on that scale without compensation would not only be morally unjustifiable but would be in clear breach of the Human Rights Act 1998. That road was closed.

So it is no surprise that Parliament was forced back on an unsatisfactory compromise. By a 2003 amendment to the Land Registration Act 2002, a ten-year window was created during which CRLs would remain an overriding interest and PCCs were free to identify and register them at the Land Registry without the usual fees. However, after 13 October 2013, the CRL on any unregistered former rectorial land would only survive until the land changed hands and thereafter would lapse for ever. For CRL it was to be slow death by attrition rather than the swift legal execution by act of Parliament which nearly all opinion within the Church and the legal profession would have preferred. For the ordinary elected members of PCCs like our own, very few of whom were either medieval historians or land lawyers, it created a burden not unlike that carried by Col. Bingay and his colleagues 50 years before. The advice of diocesan lawyers up and down the country was sought and passed with variable degrees

of helpfulness by diocesan authorities to their PCCs. The advice in each case was essentially the same. PCC members were reminded that, as trustees of the assets of their charity, they had a legal obligation to safeguard those assets by making vigorous efforts to identify and register any known or discoverable CRLs before the October 2013 deadline. And in case lazy or baffled PCCs were tempted to drag their heels in such an arcane and complex matter, they were reminded that failure to act would not only render individual members of the PCC personally liable to meet the cost of repairing the chancel but probably make it impossible to get a grant in aid of chancel repair from funding bodies like English Heritage.

The current situation in Goring

It is not clear why the Diocese of Oxford did not alert and advise its PCCs of their responsibilities in this matter until July 2009 nor why it did not make available to them the very helpful document produced by the Legal Advisory Commission of the Church of England. Its tardiness meant that Oxfordshire PCCs had only a little over four years before the October 2013 deadline to investigate their situation and decide on the best course of action. Without the discovery of the surviving results of Bingay's burden – or perhaps Bingay's bequest – the task would have been well-nigh impossible in the parish of Goring. Yet in one way our task was simpler than his. He was charged with discovering, not only which land carried the CRL and who owned it, but also what its adjusted value was if compounded for cash. Only the first two of these tasks was required to register each CRL before October 2013. The immensely more difficult task of calculating what proportion of any chancel repair bill should be assigned to each CRL could wait. The problem for the PCC is that the changes which had increased the 13 lay rectors of 1848 to more than 80 a century later did not stop when Bingay laid down his burden in 1945. On the contrary, in the half century since then, land use in the parish has probably changed more dramatically than at any time in its recorded history. The lengthy research which underpins this article has leant heavily on the enquiries of Bingay and Dodd but it has presented the PCC of St. Thomas' with a real dilemma. What it has decided to do about it will be explained in the October 2013 edition of the *Goring Gap News*. There is always a shifting and porous boundary between history and news but it is only the former that is the proper concern of our Society and this journal.

Garry Alder

Note on Sources

The three principal sources for this article are church records at the Oxford History Centre in the PAR115 series, the voluminous records of the Tithe Redemption Commission at the National Archives at Kew, and the 1846 Tithe Award and Map and Col. Bingay's Chancel Repairs Liability papers in the GSLHS collection. For the Wallbank case and the consequences of the Land Registration Act 2002, there is extensive material on line. I am very grateful to John Martin of Edinburgh for the portrait of Col. Bingay and for sharing his wartime memories of his grandfather.