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ARTICLE

Devises of advowsons to trustees

Christopher Jessel

Solicitor, UK

Abstract

A devise of an advowson to human trustees in a will without using words of limitation takes effect, as the result of a parenthesis in section 30 of the Wills Act 1837 and of subsequent legislation, as a settlement for the lifetime of the last survivor of the original trustees; thereafter the advowson will pass to the testator's residuary beneficiaries. The Law Commission's Report on Wills recommends that this anomaly should not apply to wills coming into effect in the future. The existing rules will continue to govern wills made before any change in the law.

Keywords: advowsons; Church of England; Law Commission; patronage; reform

Introduction

The Law Commission Report *Modernising Wills Law* (Law Com No 419) was published on 16 May 2025.[1] Annexed to it is a draft Bill to replace the much amended Wills Act 1837. That Act has survived well but several factors, including a demand for electronic wills and difficulties over execution as well as the out-dated language have led to a demand for a revision. Rather than further amend the 1837 Act, the Commission has elected for a wholly new statute.

Schedule 3 paragraph 4 to the Bill provides that a disposition of property by a will has effect over all estates or interests in the testator's property. It is intended to replace sections 28 and 30 of the 1837 Act.[2] That Act reformed the pre-existing law by abolishing several technicalities and obstructive rules. Section 30 relates to devises in trust and provides:

> Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

[1] Which can be accessed here: https://lawcom.gov.uk/project/wills/#3-Documents (accessed 18 June 2025).

[2] Law Com No 419, Vol II, explanatory notes, paras 1.111 and 1.117.

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The words in parenthesis provide that the reform made by the section should not apply to a presentation to a church. A right of presentation is the right to present a cleric to the bishop for approval to become the incumbent of a parish church. It is exercised through the right of patronage which in turn belongs to an advowson. An advowson is an incorporeal freehold hereditament. Although advowson, patronage and presentation are distinct, they belong together and are often used as synonyms of one another.[3] There were three types of advowson.[4] Most common were advowsons presentative which involved a presentation. Advowsons collative are held by a bishop as corporation sole so presentation does not arise. Advowsons donative were exempt from the need to present although they had been placed under the bishop's jurisdiction by section 14 of the Queen Anne's Bounty Act 1714. Section 12 of the Benefices Act 1898 converted them to presentative, so thereafter a devise would be treated in the same way.

In section 30, the word 'other' in the parenthesis refers back to and therefore must relate to 'real estate'. Real estate is defined in section 1 as including an advowson. Strictly speaking, a right of presentation is not itself real estate but an intangible chattel comprising a chose in action arising from the advowson[5] but in this context[6] 'a presentation to a church' must here be construed as meaning an advowson presentative.

One reform of the Act related to use of words of limitation which describe the nature, extent, or duration of the estate granted or devised. A grant, either by deed or by will 'to John' without more would simply give John a life estate. In the absence of other provision, on his death the property would revert to the estate of the donor. To confer a fee simple special words had to be used. For an individual they were 'to John and his heirs' or for trustees it would be to them 'and their heirs and assigns'. The Act abolished the need for a specific devise of real estate to use them but the parenthesis in section 30 excepted devises of advowsons in trust. This article discusses why that was so, what the position is in the modern law, and the effect of the Law Commission proposals.

Historical background

At the time the 1837 Bill was before Parliament there was concern in some quarters about what were seen as abuses of the patronage system.[7] The parenthesis in section 30 appears to have been enacted in that context. There may formerly have been some uncertainty as to how far words of limitation were needed for a devise of an advowson but, if so, the law had been settled 16 years earlier. In *Pocock and another v*

[3] For example *Sharpe v Worcester Diocesan Board of Finance Ltd* [2015] EWCA Civ 399, [2015] ICR 1241 at para 16.

[4] W Blackstone, *Commentaries on the Laws of England*, 2.iii.1.

[5] *Mirehouse v Rennell* (1833) 7 Bli NS 241 at 318, 5 ER 793 at 765, (1833) 1 Cl & F 527 at 604, 6 ER 1015 at 1044.

[6] *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at para 29.

[7] W A Evershed, *Party and Patronage in the Church of England, 1800–1945* (PhD paper, 1985), which can be accessed here: https://ora.ox.ac.uk/objects/uuid:a5385611-8697-4597-bd9d-7bae63a4da64/files/mec6419681b108e43116efc27f6f58774 (accessed 18 June 2025).

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Bishop of Lincoln[8], Richard Pearce made his will in 1795 in which he said 'I do give to my son Richard the perpetual advowson of Husbands Bosworth, in Leicestershire …'. The son Richard in turn by his will devised the advowson to Mr Pocock and another. The Pocock family included several clergy, one of whom, George Pocock (1774–1843) was an active Methodist at a time when the severance of Methodism from the Church of England was not yet complete.[9] He was a trustee of several Wesleyan Methodist Chapels and, although it is not evident from the report of the case if it was indeed him who was involved (or whether the other plaintiff was a co-trustee), that seems likely. The bishop (whose involvement is also unclear: perhaps he may have declined to institute a nominee of Pocock's) argued successfully in the Court of Common Pleas that the effect of saying 'give' in the father's will without including the words 'and his heirs' was merely to give the son a life estate in the advowson. The son's rights therefore ceased on his death and he had nothing to leave by will. Thus Pocock and his co-plaintiff had no title to present a clerk to the living of Husbands Bosworth. Pocock's counsel argued that the use of the words 'perpetual advowson' were sufficient to give a perpetual or fee simple estate but the court found against him. It was therefore clear before 1837 that, at common law, if a gift of an advowson was intended to be in fee simple it had to use words of limitation.

Pocock was not alone in seeking to gain rights of presentation for the benefit of a party interest. Many influential people were concerned about what they regarded as extremist interests acquiring control over parish appointments and using patronage trusts to secure the admission of clergy in sympathy with their evangelical views. A notable example was the Simeon Trust.[10] John Thornton acquired ten advowsons and used them to appoint evangelical ministers to parishes. He died in 1813 and under his will they became vested in a trust of which Charles Simeon became one of three trustees. The Simeon Trust was set up to hold initially 21 livings,[11] some of which had been bought and some given for what was described as 'the gospel ministry'. Simeon died in 1836.

When boroughs were being reformed in 1835 concern was expressed in the House of Lords that, where the patronage of a living belonged to a corporation, it was possible that under the new electoral system a majority of elected councillors might not belong to the Church of England. Accordingly, section 139 of the Municipal Corporations Act 1835 required the reformed corporations to sell their advowsons under direction from the Ecclesiastical Commissioners. It is said that Simeon and his co-trustees took the opportunity to acquire some advowsons for their work.

This was therefore a very real issue in 1837. In particular it may have been felt that what later became known as party trusts[12] might seek to obtain influence over an unadvised testator. The 1837 Bill provided an opportunity to remedy what was then seen as an abuse. Nearly 200 years later many patronage trusts are still active and control hundreds of advowsons.[13]

[8] (1821) 3 Brod & Bing 27, 129 ER 1193. See *Dover v Alexander* (1843) 2 Hare 275, 67 ER 114.
[9] See https://dmbi.online/index.php?do=app.entry&id=2199 (accessed 18 June 2025).
[10] See https://www.simeons.org.uk/simeons-trustees-history (accessed 18 June 2025).
[11] It now has patronage interests in 165 benefices.
[12] HL Deb 17 June 1931 vol 81: debate on Benefices (Exercise of Rights of Presentation) Measure 1931.
[13] T Sutton, 'Advowsons and Private Patronage' (2019) 21 Ecc LJ 267–288, at 280–282.

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The Wills Act 1837

Section 28 of the Wills Act 1837 abolished the need to use words of limitation in gifts to 'any person'. Section 1 provides that every word in the Act importing the singular number should be construed as applying to several persons, thus on the face of it extending section 28 to devises to bodies of people. However, section 1 also provides that the words shall not be so interpreted where the context of the Act excludes such construction. On the principle that *inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of the other) since section 30 covers trustees, a straightforward reading of the Act indicates that the context of section 28 will not apply to devises to them.

It is arguable that the intended purpose of section 30 (disregarding the parenthesis) was to reverse the former rule that, even if a will used words of limitation in a devise to trustees, they only took an estate limited to the period of their duties and not a fee simple.[14] If the scope of the section goes no further, it is not clear why an outright gift of a right of presentation to trustees should be excluded from that reform. The literal wording of section 30 considered on its own applies to all aspects of a devise of real estate to trustees and is not, in terms, applicable only to that aspect of their duties; it is wide enough to cover words of limitation even though they are not mentioned.

On the face of it, the plain meaning of the section, apart from the parenthesis, is clear; any ambiguity arises from reading in knowledge of the pre-1838 rules affecting legal estates taken by trustees. The purpose of the parenthesis can be gathered from the known political concern about advowsons and the likely intention of members of Parliament although it might have been expressed more clearly. The Bill leading to the 1837 Act was drafted by John Tyrrell,[15] an experienced barrister. One might have expected a lawyer to have referred to advowson (as in section 1) rather than presentation as there is no obvious reason to exclude advowsons donative. It may also be relevant that a right of presentation on its own, as a chattel, should be bequeathed not devised. It might therefore be speculated that the parenthesis was not included in the original draft and could have been inserted by an amendment during the Parliamentary process for political reasons.

The effect of the parenthesis is to exclude the reform and preserve the pre-1838 law in this instance. If the testator devises the advowson but does not include words of limitation then the original trustees, instead of taking a fee simple for the benefit of their trust, only receive a limited interest for the duration of their lives, expiring at the death of the last survivor.[16] If the individual trustees are named in the will then it will be the survivor of them; if there is a general reference such as 'the trustees of

[14] *Cordal's Case* (1593) Cro Eliz 316, 78 ER 566 also summarised in *Manning's Case* (1609) 8 Co Rep 94 at 96a, 77 ER 618 at 622; see Law Com No 419 Vol 1 para 11.96; *Doe d Player v Nicholls* (1823) 1 B&C 336, 107 ER 125; subsequently confirmed for pre-1837 wills: *Watson v Pearson* (1848) 2 Ex 581, 154 ER 623; *Blagrave v Blagrave* (1849) 4 Ex 550, 154 ER 1332. See F V Hawkins, *A Concise Treatise on the Construction of Wills*, 2nd edn (London, 1912), Ch XIII.

[15] HL Deb 23 February 1837, vol 36, col 963.

[16] *Re Irwin* [1904] 2 Ch 752; *Re Hunter and Hewlett's Contract* [1907] 1 Ch 46.

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the X patronage trust' then under section 24 it will be the survivor of those in office at the time of the death of the testator.

The trustees will therefore hold the advowson not absolutely but merely for a life interest. The legal estate would now be comprised in a settlement; if the testator died before 1997 it would be governed by the Settled Land Act 1925 (SLA 1925) and, if after 1996, by the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996). That constitutes a drafting trap, one easy to fall into, because few lawyers, even experienced will drafters, nowadays appreciate the need for and use of such a formula. Over the years this could have led to some wills having unintended consequences which may still affect parishes.

The provision has a narrow application. Under section 28 an outright gift of any form of real estate, including an advowson, to one or more individuals does not need words of limitation. Under section 30 devises of land or other forms of real estate to trustees do not need to use the words either. If the will does include those words for a gift of a presentation in trust the devise will carry the fee simple. It seems therefore that the parenthesis was aimed at wills made without the benefit of wording that a professional lawyer would provide. If a testator was determined to give the advowson to a body of trustees and took legal advice so that the devise was to them, their heirs and assigns, that would confer the fee simple. The parenthesis could be relevant if a testator without legal knowledge signed a home-made will. Thus after 1837 a gift in the form used by Richard Pearce in *Pocock* would have been absolute but similar wording in a devise by the son to trustees would have taken effect only for the lifetimes of the original trustees.

The intention may have been that, even if some unscrupulous party trustees did manage to get a testator to sign a will or codicil giving them power to control the living for a while, eventually, it would revert away from them. That would be a compromise between the freedom of even an ill-advised testator to dispose of property and the long-term integrity of the family estate, something which was valued more highly in the 1830s than it might be today.

The reference to a trustee does not distinguish between on the one hand patronage trustees organised to acquire advowsons for church party motives and on the other private trustees, perhaps holding property on behalf of a child or a surviving spouse. Such a trust for the testator's family would often be of residue and at common law, words of limitation were not required for a residuary devise.[17] This article will therefore focus on patronage trustees, as they are more likely to have received specific devises of advowsons. As they will not usually have been given an associated manor to which the advowson was appendant it will be assumed that the devise was in gross.[18] Under section 32 of the Patronage (Benefices) Measure 1986 (PBM 1986) all advowsons are now held in gross.

Section 30 only applies to trustees as such. Otherwise the provision of section 1 that the singular includes the plural will apply. Before 1926, two or more persons could have held legal estates in an advowson as tenants in common. The Law of Property Act 1925 (LPA 1925) imposed a trust on undivided shares and converted

[17] *Grayson v Atkinson* (1752) 1 Wils KB 333, 95 ER 647; *Morris v Lloyd* (1864) 3 Hurl & C 141, 159 ER 481 involving a pre-1838 will.

[18] See Benefices Act 1898, s 1(2).

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the right to an equitable interest but that is regarded merely as conveyancing machinery.[19] Until 1996 the interest was in the notional proceeds of sale but under TOLATA 1996 it is now in real estate. It would follow that if, even after 1925, a testator specifically devised an advowson to beneficiaries in undivided shares, they would take as individuals under section 28 of the 1837 Act and not as trustees under section 30.

While section 31 appears to give a fee simple to the trustees without any exception for rights of presentation, that should be read with section 30. Section 31 applies where either the beneficial interest is not given to any person for life, or it is but the trust purpose may continue beyond that life. The effect of section 30 is that the trustees do have a life interest which expires on the death of the last of them.

Assuming there was no gift over (which is likely if the testator intended an absolute devise) the future interest in the advowson will be undisposed of and, on the death of the last of the original trustees, it will pass by reverter back to one or more persons entitled to the testator's estate, referred to here as the revertee.

Words of limitation remained necessary long after 1837 in *inter vivos* dispositions. The rule was relaxed in section 51 of the Conveyancing Act 1881 (which referred to deeds) and removed completely by section 60(1) LPA 1925 which applied to a conveyance of freehold land. 'Land' is defined in section 205(1)(ix) as including an advowson but 'conveyance' is defined in section 205(1)(ii) as not including a will; it may have been thought there was no need to do so following the 1837 Act. Accordingly, until 1926, most lawyers were aware of the use and application of words of limitation although some may have assumed that the 1837 Act had dispensed with them in wills for all purposes. After 1925, many would have regarded them as obsolete and it is likely that wills leaving advowsons to trustees were drafted, even by experienced solicitors, without them.

Settlements of the legal estate

Until 1925, life tenancies and reverters could subsist as legal estates. Because the limitation period for advowsons was long and time does not run after 1988, a revertee could even now have an interest through the estate of a testator who died before 1926. That would involve consideration of the former law including the operation of the Settled Land Act 1882, the Land Transfer Act 1897 and the transitional provisions of the LPA 1925. This article only discusses the position where the testator died after 1925. Under section 1 LPA 1925 both life interests and reverters are equitable and so there have to be trustees to hold the legal estate. In what follows the reference to trustees needs to distinguish patronage trustees as recipients of the devise from the persons who, under the SLA 1925 or TOLATA 1996, are trustees of the settled land or of a trust of land.

Where the SLA 1925 applies and land (defined by section 117(1)(ix) as including an advowson) is subject to a reverter, the effect of section 1(4) is to create a settlement

[19] *Re Jackson, Smith v Sibthorpe* (1887) 34 Ch D 732; *Re Kempthorne* [1930] 1 Ch 268; *Pile v Pile* [2022] EWHC 2036 (Ch), [2024] 1 P & CR 6.

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of the legal estate. Under section 19 the person of full age beneficially entitled to possession for his life is the tenant for life and if there is more than one such person they are joint tenants for life. Despite section 36 LPA 1925 they were not trustees for sale because of section 19(2) SLA 1925. The tenants for life hold the legal estate in fee simple on the trusts of the settlement. In the present context 'beneficially' will extend to the situation where they also hold on trusts other than those in the settlement. So far as the trust created by the testator's will is concerned the individuals who are the patronage trustees, as beneficiaries of the SLA 1925 settlement, are simply the holders of a life interest and it makes no difference that, in themselves, they are trustees holding on the terms of distinct patronage trusts. Under section 30(3) if the testator has not appointed trustees of the settlement – which is likely if an outright gift was intended – they will be the executors.

Section 1 of the Administration of Estates Act 1925 (AEA 1925) provides that the testator's real estate vests in the executors who may under section 36 assent to the vesting in a devisee. It is likely that, if they were unaware of the need for words of limitation in the devise, they would have used a simple assent possibly stating that the recipients held the advowson on their patronage trusts. If the testator died before 1997 what should have been done under section 6 SLA 1925 is that they made a vesting assent conveying the fee simple in the advowson to the patronage trustees as joint tenants for life (and not as statutory owners[20]) to hold on the trusts of the will.

Section 36 AEA 1925 provides that an assent of real estate to which the testator was entitled shall vest the estate or interest to which the assent relates. Section 8(4)(b) SLA 1925 requires the assent to contain certain particulars specified in section 5. Although section 5(3) provides that an *inter vivos* vesting deed is not invalidated by any error in it, that relates to matters such as clerical errors so that an error or omission of substance in such a deed renders it ineffective.[21] It is unclear if the same applies if the particulars are not included in an assent; if it does it will be ineffective to pass legal title. Section 13 SLA 1925 provides that until a vesting assent is made any purported disposition of the land *inter vivos* (except in favour of a purchaser) by any person should not take effect but also says that does not apply to a disposition by a personal representative. Disposition is defined in section 117(1)(iv) as an assurance of property specifically including an assent. In *Re Duce and Boots Cash Chemists (Southern) Ltd's Contract*[22] an assent which on its face made it clear that it was being made to the wrong person was found to be invalid but in the present case the assent would be to the right people but in the wrong capacity. If such an assent was effective then, even though it would not say so, the original trustees would hold the advowson not as absolute owners (on their own patronage trusts) but as tenants for life on the trusts of the testator's will and, as such under sections 16(1)(i) and 107, as trustees for all persons interested. If the assent was ineffective then the legal estate would remain with the executors but that would not affect the equitable life interest of the patronage trustees.

[20] See SLA 1925, s 29(1).

[21] *Re Cayley and Evans' Contract* [1930] 2 Ch 143.

[22] [1937] Ch 642.

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In contrast to section 5 SLA 1925, TOLATA 1996 does not specify any formal wording for the assent. The correct procedure would be for the executors either to retain title and execute an assent in favour of themselves[23] as trustees of land or appoint replacement trustees of land, in either case to hold the advowson in trust for the patronage trustees until the death of the last original trustee and then for the revertee. Even if the executors have assented to the patronage trustees by a simple assent referring (if at all) only to the patronage trust and not to the trusts of the testator's will, they would still hold the legal estate on the trusts of the settlement. That could put them in a conflict of duties as regards the revertee, particularly in view of the issues as to limitation and disposition discussed below. If they believed (as they reasonably would) that the testator intended their trust to have an absolute interest there would be a strong incentive to act so as to override the rights of the revertee. Section 36(9) AEA 1925 preserves the revertee's rights notwithstanding that there may be no reference to the trust in the assent.

The Patronage (Benefices) Measure 1986

The law of patronage was reformed by the Patronage (Benefices) Measure 1986 (PBM 1986) much of which came into force on 1 January 1989.[24] Section 1 provides 'Except as provided by this Measure, no person shall be entitled ... to exercise any of the functions of a patron of a benefice unless he is registered as patron of that benefice'. Each diocese has its own register. Under section 3(6) a transfer of a right of patronage must be in the prescribed form. Although section 3(9) as originally enacted provided that section 3 did not apply to a transfer by personal representatives or on the appointment of a new trustee, that was amended by section 17(b) of the Church of England (Miscellaneous Provisions) Measure 2000 which provided that section 3(6) PBM 1986 should apply in those cases and since then executors have been bound to use Form 14 in the schedule to the Patronage (Benefices) Rules 1987.[25] Under rule 7(3) the registrar can authorise an amendment to the form and that would be necessary if it contained a reference to the trusts.

Under section 1(4) PBM 1986 the register is conclusive as to the matters registered but the Measure is concerned more with exercise than ownership or title. While some provisions, notably section 4, 32 and 33, do amend the law of advowsons, it is not principally about them. It refers to the person registered, or entitled to be registered or to present or to the right of patronage, and the Measure appears to distinguish between presentation, patronage and advowson. Section 1 is negatively expressed although section 5 does positively permit office holders, personal representatives and attorneys to discharge the functions of a patron and section 16 provides for circumstances in which the bishop may exercise the right of presentation.

[23] *Re King's Will Trusts* [1964] Ch 542.

[24] Archbishops' Instrument dated 31 December 1986 specifying 1 October 1987 plus 15 months (under s 1(2) applied to s 4(3) of the 1986 Measure).

[25] SI 1987 No 773.

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Under rule 3(1)(d) of the 1987 Rules matters registered include the interest of each registered patron and while that might include a reference to the fee simple in the advowson it will not necessarily do so. Form 14 provides that the personal representatives 'hereby transfer the full interest of the said deceased in the patronage of the above benefice'. 'Full interest' might only carry the equitable interest. Unlike sections 11 and 58 of the Land Registration Act 2002, nothing in the PBM 1986 expressly vests the legal estate in the advowson in the person registered. However, a right of patronage cannot subsist independently from the advowson so, if the testator had held the legal estate in the advowson, 'full interest' might be construed as carrying it. Since, following the amendments in section 34 of the PBM 1986, the only practical benefit of an advowson is to present, the effect of registration as patron is much the same as ownership but the title to the legal estate is a matter of property law and must be ascertained accordingly.

Even though the testator's executors may, because of a defect in a vesting assent, not have effectively transferred that title to some other person, it is only the person registered who can present and that would most likely be the patronage trustees. Until someone else is registered the executors can exercise that power under sections 5(2) and 21 but under the SLA 1925 they must do so as the life beneficiaries (the patronage trustees) direct. Under sub-sections 5(3) and (4) PBM 1986 or sections 9 and 18 TOLATA 1996 the executors could delegate that power to the life beneficiaries.

Adverse claims – limitation

The patronage trustees may take the view that, as they have been exercising rights unchallenged for many years, they have acquired a permanent right to do so. That by itself would not bar the reverter which, as a vested future interest, will in principle subsist indefinitely even if the patronage trustees are unaware of it and even if the revertee does not claim it until many years after the life interest has expired. A partial solution may formerly have lain in the Limitation Acts. Limitation of actions is distinct from words of limitation and is governed by statute.

Section 25 of the Limitation Act 1980, re-enacting a provision initially in sections 30 to 33 of the Real Property Limitation Act 1833 (as amended by the Limitation of Action Act 1843), formerly dealt with possession of advowsons. Unlike the 1925 property legislation, the Limitation Acts did not treat incorporeal rights, such as an advowson, as land. In broad terms the right of a person out of possession to claim it expired after whichever was the later of (1) the appointment by the possessor of three clerks to the benefice or (2) 60 years during which the benefice had been held adversely to the right of the paper owner. It was not the advowson but the *benefice* which had to be held by successive incumbents. There was also (3) a longstop of 100 years, again during which the benefice had been held adversely. Section 25(3) provided that, at the expiration of the limitation period, the title of a person out of possession to make a claim should be extinguished.

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Section 4(3) PBM 1986 repealed s 25 of the Limitation Act 1980 for the provinces of Canterbury and York[26] with effect from 1 January 1989 so, if the limitation period had not expired by then, it never will. As there was a minimum period of 60 years after the death of the last original trustee during which the benefice had to have been held adversely, it is unlikely that, for a testator who died after 1925, it would have expired by the end of 1988.

Adverse claims – registration

Under section 4(1) PBM 1986 the register may be rectified in favour of a person who is not, but ought to be, registered. If the current trustees remain registered beyond the duration of the life interest of the original trustees, a revertee can claim rectification. In principle that could be at any time although in practice it may become difficult to establish old rights. There is no equivalent to section 25(3) of the Limitation Act 1980 so the revertee's rights are not extinguished by the passage of time but instead section 4(2) provides that if an entry in the register relating to any benefice has been adverse to the claim of any person for a period of more than 30 years then the entry may only be altered in favour of that person if all the persons interested agree to that rectification.

'Persons interested' are not defined but presumably include the existing registered patrons even if their claim derives from holding over after the expiry of the former life interest. They might include any other persons who could have a legal title such as the personal representatives of the testator's executors or of the last original trustee under the chain of executorship, in accordance with the section 7 AEA 1925. 'An entry' in section 4 PBM 1986 refers to the current entry because section 4(2)(a) PBM 1986 provides that it 'has been adverse'; every time it is changed there is a new entry and the previous entries, even if not deleted, cease to have effect. Although in substance the advowson may belong to 'the X patronage trust', if the trustees are not incorporated that is not a person and it is necessary to name each trustee[27] so that every time a new trustee is appointed, that is a new entry and the 30-year period starts running afresh.

The requirement that all persons interested must agree is equivalent to saying that they must consent to the rectification. Section 4(2) PBM 1986 does not say such agreement must not be unreasonably withheld and generally the law will not imply it.[28] If the patronage trustees did withhold agreement they would be relying on the passing of time to defeat the rights of the revertee in the same way as a statutory limitation but it is not clear that they can do so.

Provided it can be established that the legal estate is required to be vested in the revertee the current holder is bound under section 3(3) LPA 1925 to execute a conveyance of it. Section 44(vi) of the Trustee Act 1925, referring to land (which under s 68(6) includes an advowson), provides that

[26] The Welsh Church Act 1914 abolished rights of patronage in Wales.

[27] See the Patronage Benefices Rules 1987, Form 13.

[28] But see *Bocardo SA v S&M Hotels Ltd* [1980] 1 WLR 17, *Cryer v Scott Bros (Sunbury) Limited* (1986) 55 P&CR 183, CA, *Macdonald Hotels Ltd v Bank of Scotland plc* [2025] EWHC 32 (Comm).

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> [w]here a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement

then the court may make an order vesting the land in any person for such estate or interest as the court may direct.

Although s 44(vi) does not refer to alteration of the diocesan register the same principles will apply. 'Conveyance' is widely defined in section 68(3). The judge has a discretion and may have regard to all relevant matters such as the passage of 30 years, the testator's presumed intention and possibly the views of the ecclesiastical authorities. Equally, if the revertee has not previously been aware of the right to claim the advowson but acts promptly on discovering it, the judge can also take that into account. There is similar provision in section 12 SLA 1925.

Successor trustees

The original trustees are likely to have retired in favour of successors, possibly long before the death of the last of them. The equitable interest in an advowson devised without words of limitation would, on that death, vest in the revertee. Those successors may not be aware of that or, if they are, may take the view that they owe no duty to the revertee. They are likely to continue to act as patrons, being registered and presenting clerics.

If the testator died before 1997 and if the assent by the executors in favour of the original trustees was effective, section 104 SLA 1925 prohibits the tenant for life from assigning the statutory powers so that the original trustees could not, on an appointment of new trustees, assign the legal estate in the advowson. Although section 36(7) AEA 1925 provides that an assent is, in favour of a purchaser from the assentee, to be taken as sufficient evidence of title, purchaser is defined in section 55(1)(xviii) as one giving value which would not include such successors as new trustees; in any case it is unlawful to sell an advowson[29] and section 36(7) AEA 1925 protects the rights of a person rightfully entitled. However, the powers are assignable in equity and under section 24 SLA 1925 an assignee can obtain an order that they be exercised in the name of the estate owner and could, so long as any of the original trustees was alive, direct how the presentation be exercised. If the assent was ineffective so that title was retained by the testator's executors (in their capacity as trustees of the settlement created by the will) the new trustees of the patronage trust, when appointed, could give any directions to them.

When the last of the original patronage trustees dies, the settlement comes to an end. If the assent by the testator's executors was effective the legal estate in the advowson then passes to the personal representatives of that last trustee[30] who

[29] PBM 1986, s 3(1).

[30] *Re Bridgett & Hayes Contract* [1928] Ch 163.

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might be family members or friends unconnected with the patronage trust and it would thereafter devolve through the chain of personal representatives of the last survivor of them. [31] Where the legal estate was vested in the original trustees in their capacity as joint tenant for life then under sections 16(1)(i) and 107 SLA 1925 they are trustees for all persons interested which must include the revertee and that must equally apply to those personal representatives. If the assent was not effective then title, having remained with the testator's executors, would devolve from the last survivor of them but again they would hold on behalf of the revertee.

If the testator died after 1996 and the original trustees had become trustees of land under TOLATA 1996, then any new trustees who replace them will take legal title as successors and will owe normal trustee duties to all beneficiaries and so they too cannot set up their own possession in contravention of the revertee's rights. As they did not get to that position by a dispossession of the original trustees, but by what appeared to be a succession from them, they cannot at the same time claim to be both lawful successors and adverse possessors.

There is no analogy with the position of reverters under the School Sites Act 1841. That Act applied to land granted for the site of a school and provided that the school trustees (often the vicar and churchwardens) had a determinable statutory fee simple not just a life estate (as confirmed by the amendments to section 7 LPA 1925 by the Law of Property (Amendment) Act 1926) so that school sites were not settled land. In *Re Rowhook Mission Hall, Horsham*[32] the judge held that, when the 1841 Act reverter occurred (on closure of the school), the effect of the determination of the school trustees' legal estate was that the revertee's rights thereupon matured into a legal fee simple absolute and time began to run against him and became extinguished after the limitation period applicable to land, so that the possessory fee simple of the trustees became unchallengeable.[33]

That cannot apply to advowsons (unless title was extinguished before the repeal of section 25(3) of the Limitation Act 1980 at the end of 1988) because the rules of limitation for land do not apply to incorporeal hereditaments. Unlike land there can be no physical possession of an advowson; although by acting as if they were owners the trustees for the time being might claim to have some form of possessory freehold [34] but time will not run against, or extinguish the rights of, the revertee. On the death of the last original trustee the equitable interest vests in the revertee who is entitled to call for the outstanding legal estate under section 3(3) LPA 1925. As Nourse J said in *Rowhook*,[35] if on the facts of that case the land had been deemed to be settled land 'the closure of the school would undoubtedly have resulted in the legal estate becoming held by the trustees in trust for the revertee'. The same would apply under a trust of land.

[31] AEA 1925, s 7.

[32] [1985] Ch 62.

[33] See now the Reverter of Sites Act 1987.

[34] *Webster v The Overseers of Ashton-Under-Lyne, Hadfield's Case* (1872-3) LR 8 CP 306 at 321; *Rosenberg v Cook* (1881) 8 QBD 162.

[35] [1985] Ch 62 at 79.

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Disposals by the trustees

If the current patronage trustees become aware that they have only a limited interest, and that the revertee might make a claim, they may consider how the advowson can be kept available for presentation of an incumbent adhering to their churchmanship. This can only apply if the legal estate has become vested in them, whether or not they have been registered as patron. If it has they may seek to use section 33 PBM 1986 (as amended by TOLATA 1996) to transfer the advowson to some person having sympathetic views and overreach the interest of the revertee. It provides:

(1) Where any advowson is subject to a trust of land, it shall be lawful for the trustees to transfer the advowson gratuitously to any person who has agreed to accept it and [satisfies certain conditions relating to the Church of England].
(2) ...
(3) The tenant for life of settled land may make a grant in fee simple of any advowson comprised in the settled land gratuitously to any such person as is referred to in subsection (1) above.
(4) Subsection (3) above shall be construed as one with the Settled Land Act 1925, and that Act shall apply as if the power conferred by subsection (3) had been conferred by that Act.
(5) Nothing in any local Act or trust deed shall prevent the transfer *inter vivos* by trustees of an advowson which is the subject of a trust.

On the face of it, this confers power to deal with the advowson but it is not without its own difficulties. Sub-sections 33(3) and (4) PBM 1986 relate the power of gift to the powers of a tenant for life, with the implication that it is similar to those in sections 54 to 56 SLA 1925 (which must be for the benefit of the settled land, in this case the advowson). In *Inglewood v Inland Revenue Commissioners*[36] Fox LJ said, referring to powers such as that in section 55 'they are not truly dispositive in nature'. Although section 55(1)(iii) authorises a grant for a charitable purpose the benefit must be for the settled land not for its owners: it cannot be for the benefit of the advowson itself to be vested in new owners. TOLATA 1996 does not contain any parallel to sections 54 to 56 SLA 1925 and the powers of an absolute owner conferred by section 6(1) TOLATA 1996 do not extend to making gifts to persons who are not beneficiaries of the trust. For either type of settlement a disposal of the advowson would be of the whole trust fund and extinguish the settlement, so dispossessing the revertee altogether. This would be a breach of trust.

If the original trustees are all dead and the current ones are regarded as holding a possessory title of their own by virtue of registration, they would not be tenants for life or trustees and if so would not owe any direct duty to the revertee but they could only pass on to the donee their possessory right subject to the reverter. An advowson cannot be sold so that the donee cannot be a purchaser for value and will

[36] [1983] 1 WLR 366 at 373.

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therefore be bound by the equities. This arises from the general law not from any local Act or the testator's will, which (notwithstanding section 6 SLA 1925) is not a trust deed.

Human rights

A transfer under section 33 PBM 1986 could, by depriving the revertee of the right to reclaim the advowson, violate the right to a possession under the European Convention on Human Rights Article 1 Protocol 1 and the Human Rights Act 1998.

There is some doubt as to whether an advowson is such a possession.[37] In *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v Wallbank*[38] Lord Hobhouse observed that "'possessions" ... applies to all forms of property and is the equivalent of "assets"'. The term has been interpreted by the European Court of Human Rights to include intangible immovable rights. These include a restrictive covenant and rentcharge,[39] fishing rights,[40] and hunting rights.[41] However, all of those involved rights which could generate an income. In *De la Cierva Osorio de Moscoso v Spain*[42] the court held that a nobiliary title could not be regarded as a possession partly on the ground that it could not be exploited commercially.

Although a reverter is a future interest and not 'in possession' under English law, that does not affect its status as a 'possession' under the ECHR. While a potential right to acquire property in the future does not qualify,[43] in *Stretch v United Kingdom*[44] an option to renew a lease did, although the court stressed that the benefit to the applicant included the right to sublet and take the income so that it had a financial value.

In *X v United Kingdom*[45] the European Commission for Human Rights decided that the right to participate in the work of the House of Lords was not a civil right because it 'falls into the sphere of "public law" rights outside the scope of article 6'. In *Aston Cantlow v Wallbank*[46] the House of Lords held that Church of England authorities (specifically Parochial Church Councils) are not core public bodies. It follows that an advowson is not a public law right. While it cannot be exploited commercially, it has practical benefits in enabling the holder to secure that an acceptable person is admitted to the benefice. Although for some purposes of EU law a trust interest is regarded as a right *in personam*,[47] unlike a noble title or membership of the House of

[37] See Sutton (note 13), at 284–285.

[38] [2003] UKHL 37, [2004] 1 AC 546 at para 91.

[39] *S v UK*, App No 10741/84 (13 December 1984).

[40] *Posti and Rahko v Finland* (2003) 37 EHRR 6.

[41] *Chassagnou v France* (1999) 29 EHRR 615.

[42] Reports of Judgments and Decisions 1999-VII, p 485, App No 41127/98 (28 October 1999).

[43] *Anheuser-Busch Inc v Portugal* [GC] (2005), App No 73049/01, ECHR 2007-1, *Kopecky v Slovakia* [GC] (2004), App No 44912/98, ECHR 2004-IX.

[44] (2004) 38 EHRR 196.

[45] (1978) 16 DR 162. See also *Mereworth v Ministry of Justice* [2011] EWCA Civ 1796 at para 22.

[46] [2004] 1 AC 546.

[47] *Webb v Webb* [1994] EUECJ C-294/92.

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Lords, there is no doubt in English Law that an advowson, as real estate, is a right *in rem*.

Position of the beneficiaries

Although under section 1(4) SLA 1925 or TOLATA 1996 the advowson is comprised in a settlement which governs the machinery vesting the legal estate, that is not conclusive of the beneficial rights of the parties. While a life interest followed by a remainder constitutes a single trust, a reverter is not like a remainder as it arises by operation of law not by the disposition of a settlor. At common law a life tenant had a legal estate in possession and a revertee had a legal future interest. Neither the imposition of a settlement under the Settled Land Act 1882 nor the statutory conversion from a legal estate to an equitable interest in 1926 made in order to facilitate conveyancing could change the substance of those rights.

A patronage trust, being for the advancement of religion, might, and often will, qualify as charitable[48] but a trust is only so regarded if it is exclusively for charitable purposes. A trust for charity for a period and thereafter for one or more individuals for their personal benefit would not normally be regarded as wholly charitable but a charity may subsist for a limited time[49] such as for the duration of a person's life so a life interest, if considered as a property on its own, could qualify. Under section 29 SLA 1925 land vested in trustees on charitable, ecclesiastical or public trusts fell to be regarded as settled land. Under section 2(5) TOLATA land (which by virtue of s 23(2) and section 205(1)(ix) LPA 1925 includes an advowson) held on such trusts became held on a trust of land. However, if the testator died before 1997, that would not affect the trustees' status as tenants for life under the settlement and, if the legal estate had become vested in them, their powers would be restricted to those in the SLA 1925 and the PBM 1986. It would not be an ecclesiastical trust.[50]

Likewise the reverter can also be regarded as a separate property. In the absence of other provision it falls into the testator's residue not to intestacy. Section 25 of the Wills Act 1837 provides for any real estate or interest therein intended to be comprised in any devise, but which fails by reason of the devise being contrary to law or is otherwise incapable of taking effect, to be included in the residuary devise contained in the will. Either (1) the gift to the patronage trustees is regarded as a mere life interest on its own so that the reverter is undisposed of and falls into residue or (2) if the testator is regarded as having intended the fee simple in the advowson to be comprised in the devise it fails because, having regard to the parenthesis in section 30, an absolute gift would be contrary to the statute.

It is unlikely that the testator's executors will have specifically assented to the equitable interest in the reverter vesting in whoever is entitled to residue although they might have made an assent of residuary real estate with a sweeping up clause sufficient for section 53 LPA 1925 covering all unmentioned residuary estate. If not,

[48] But see *Hunter v Attorney-General* [1899] AC 309; *Re Church Patronage Trust* [1904] 2 Ch 643.

[49] *Re Cooper's Conveyance Trusts* [1956] 1 WLR 1096; *Re JW Laing Trust* [1984] Ch 143; Inheritance Tax Act 1984 ss 58(1)(a), 70 and 76.

[50] See Incumbents and Churchwardens (Trusts) Measure 1964, s 2(1).

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omission to do so will not affect the revertee's rights. A right to an asset in an unadministered estate does not qualify as a subsisting interest but merely as a right to have the estate administered[51] but that is still a proprietary interest.[52]

The equitable interest in the reverter or the right to claim it from the estate may, perhaps through a series of wills or intestacies of successive beneficiaries, pass to someone or to several people who may be descendants of the testator or who may be only remotely connected. The nature and devolution of rights of reverter were considered in *Bath and Wells Diocesan Board of Finance v Jenkinson*.[53] That was a reverter on a determinable fee simple under the School Sites Act 1841 but in this context the same logic applies to a reverter after a life interest where there is no express remainder. It devolves under section 3 of the Wills Act 1837 and may be assigned or devised.

After the life interest of the patronage trustees has come to an end on the death of the last original trustee, the revertee can claim the legal estate in the advowson but will need to trace the devolution of the title in order to obtain a conveyance. Under section 16(1) SLA 1925 title will have vested in the personal representatives of either the last original trustee or the testator's executors, depending on whether any assent was effective. If the chain of representation has been broken the revertee will need a grant *de bonis non administratis*. Under TOLATA 1996, assuming the testator's executors have assented to the advowson vesting in the patronage trustees and they in turn have assigned it to their successors, the claim would be against them. In either case, section 36(7) AEA 1925 protects any claim by a person rightfully entitled. If the persons in whom title has become vested are not prepared to execute a transfer to the revertee then the court may make a vesting order.

Corporate trustees

Words of limitation were not needed in dispositions to a corporation aggregate.[54] That was a rule of common law and applied whether the grant was for the corporation's own benefit or as trustee. It therefore did not need the relaxation in section 30 of the Wills Act 1837 and so was not affected by the derogation in the parenthesis. The view of Coke[55] and Blackstone[56] was that real property vested in a corporation in fee simple, was held for an estate limited to continue only during the existence of the corporation, and on its dissolution it reverted to the grantor. That view was rejected by the Court of Appeal in *Re Wells*.[57] Instead, if the corporation is a UK registered company, its beneficial interest in the right of presentation will pass as *bona vacantia*.[58] If it holds in trust its legal title will escheat to the Crown but

[51] *Stamp Duties Comr (Queensland) v Livingston* [1965] AC 694.

[52] *Re Leigh's Will Trusts* [1970] Ch 277.

[53] [2002] EWHC 218 (Ch).

[54] E Coke, *Commentary on Littleton*, 9b; *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300 at 307, CA.

[55] Coke (note 54), 13b

[56] Blackstone (note 4), 2.xv.7.

[57] [1933] Ch 29. See also *Attorney-General of Ontario v Mercer* (1883) 8 App Cas 767.

[58] Companies Act 2006, s 1012.

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the beneficial interest will be preserved.[59] If the corporation is not such a company its legal estate and its own beneficial interest will escheat but again the beneficial interest of others under a trust will be preserved.[60]

A corporate trustee which replaces human trustees will not be in any better position than them. If the devise was to individual patronage trustees who then formed and passed title to a new corporation (as the trustees of the former Simeon Trust became in 1960 a company called Simeon's Trustees, which in 2006 became a registered charity)[61] which was then entered on the diocesan register it would be bound by the revertee's equitable interest as much as its human predecessors.

A grant to a corporation sole did need words of limitation to the holder 'and his successors'.[62] An outright devise (such as to a bishop) would fall within section 28 of the Wills Act 1837 so that the fee simple would pass automatically to successive holders of the office. A devise of an advowson to a corporation sole can be in trust[63] in which case, if the words were not included, the parenthesis in section 30 would apply and the gift would take effect as creating an interest enduring only so long as the individual who held the office at the time of the testator's death remained in post.

The Wills Bill and future action

Parliament normally refrains from legislating on a matter which really only concerns the Church of England and which could be resolved by a measure in the General Synod but in this case, after consultation with the Chief Legal Adviser to the Archbishops' Council and the General Synod of the Church of England,[64] the Law Commission has recommended a change in the law to abolish this remaining relic and the Bill provides accordingly in Schedule 3 para 4 where there is no exception for rights of presentation. Indeed it would be hard to argue against the removal of what is now a legal anachronism, however justified it may have been when originally enacted.

The Bill is not drafted to have retrospective effect, so that it will not affect wills of testators who died before it is enacted. Furthermore, clause 26, which governs application, provides that the reforms will apply only to wills made (or varied) after two months from Royal Assent. A will made before then which devises an advowson to trustees without words of limitation will only create a life interest even if the testator dies thereafter; if the testator is alive and has capacity a codicil might be appropriate.

Trustees who have received devises of advowsons, perhaps many years ago, will need to consider their position. That will involve examining the testator's will

[59] *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793; *Dixon v Crown Estate Commissioners* [2022] EWHC 3256 (Ch).

[60] *Hamilton v Attorney-General* [2022] EWHC 2132 (Ch); [2022] BPIR 1427. See C Jessel, 'Dissolved Corporate Trustees' (2023) 2 *Conveyancer and Property Lawyer* 149–165.

[61] See https://www.simeons.org.uk/simeons-trustees-history (accessed 18 June 2025).

[62] *Ex p Vicar of Castle Bytham* [1895] 1 Ch 348; *Re Bishop of Bath and Wells* [1899] 2 Ch 138.

[63] *Bankes v Salisbury Diocesan Council of Education Incorporated* [1960] Ch 631 at 645–649.

[64] Law Com No 419, vol I, para 11.101.

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and any documents of title and perhaps tracing how many incumbents have been presented. They will have to decide whether to contact a possible revertee; if the testator died long ago, it may be expensive and perhaps impossible to trace who that might be, especially if the right to the residuary estate has become split among numerous descendants.

Any revertees who consider themselves to have an interest may wish to contact the trustees to establish title. Often they will accept that the intention of the testator should be honoured and not frustrated by an obscure rule of law which few, even among property lawyers, have appreciated could still have survived what was believed to have been its extinction 100, if not 188, years ago. If the present descendants of the testator have never had any relationship with the church in question, they may be willing to disclaim any rights they may have, rather than become involved in the complications described above.

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