
The Church and the Civil Law

Howell Charles Boynton

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Author: Howell Charles Boynton

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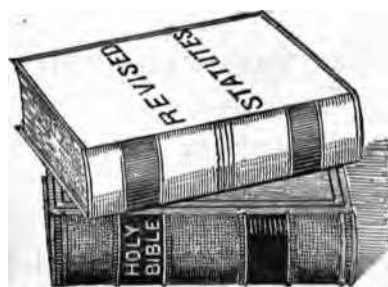




THE CHURCH

—AND—

THE CIVIL LAW.



CHARLES B. HOWELL.

THE CHURCH AND THE CIVIL LAW.

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THE CHURCH

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THE CIVIL LAW.

A MANUAL OF ECCLESIASTICAL LAW,

WITH AN

APPENDIX OF FORMS.

—BY—

CHARLES B. HOWELL, LL.B.,

AUTHOR OF "MICHIGAN NISI PRIUS CASES," ETC.

DETROIT:

CHAS. B. HOWELL,

1886.

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DEDICATION.

To

THE TRUE FRIEND,
THE LOYAL CITIZEN,
THE MANLY MAN,
THE MODEL PASTOR,
THE ABLE, ELOQUENT PREACHER,
REV. WILLIAM WARWICK RAMSAY, D. D.,

THIS LITTLE VOLUME
IS RESPECTFULLY INSCRIBED

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PREFACE.

The purpose in writing this Manual is to briefly and concisely present the essential features of the civil as related to ecclesiastical law.

In this land of civil and religious liberty, the Church, in all matters of faith, doctrine and, generally, in all spiritual things, is a law unto herself.

But there is a wheel within a wheel—in other words, a temporal within a spiritual church. The civil law has supervision over the temporalities of the church. All contracts, to be binding in the courts, must be made according to the law of the land.

The plan of the work allows only reference to the Michigan Statutes. Judge Andrew Howell's authorized Annotated Statutes are quoted from. Special laws are not referred to. But the numerous decisions cited are from the highest Courts of different States, and generally cover adjudications which are uniform throughout the country.

The Michigan Statute authorizes a variety of methods of church incorporation. The clear-headed lawyer or layman can readily decide which is to be preferred.

Among many who have aided me in the preparation of this work, I cannot forbear from here returning my profound thanks to the following persons: Hon. Thomas M. Cooley, Ann Arbor; Hon. O. A. Critchett, Monroe; Hon. John Moore, East Saginaw; Hon. C. R. Brown, St. Ignace, Rev. Dr. J. S. Smart, Albion; Rev. Dr. J. H. McEldowny, Rev. Dr. Moses Smith, Messrs. Ervin Palmer and Fraser & Gates, of Detroit.

The temporalities of the churches in this country are fast increasing in value, and those interested cannot be too careful in preserving their titles inviolate. The author hopes this Manual may aid such in the interpretation of the laws which govern the church militant.

C. B. H.

Detroit, July, 1886.

THE CHURCH AND THE CIVIL LAW.

CHAPTER 1.

INCORPORATION OF RELIGIOUS SOCIETIES.

ANY number of persons of full age, not less than five, may sign articles of association to organize a church or religious society. They may elect by a plurality of votes, not less than three, nor more than nine trustees, to take charge of the property and transact all business relating to the temporalities of the church. A majority of the trustees must be members of the church or society. *Sec. 1618, Howell's Mich. Statutes.* In the Methodist Episcopal Church, two-thirds of the trustees must be members of the church.

Persons desirous of forming themselves into a religious corporation should sign articles of association for that purpose, agree upon a name, elect trustees and place their articles of association on record, when duly signed and executed. They thereby become a corporation of the name agreed upon, and may take, hold and convey property, and exercise the ordinary functions of corporate bodies.

**MANNER OF ELECTING TRUSTEES
AND VESTRYMEN.**

The Society may by a plurality of votes, elect the minister, priest, rector or other officiating clergyman the president of the corporation for the time being. One of these, or if none be present, one of the elders, deacons, or vestrymen, or for want thereof, any stated member, shall publicly notify the congregation of the time and place of election, which notice shall be given to the congregation for two successive Sabbaths on which such church, congregation or society shall hold services, next preceding the election. Any two elders, deacons, wardens, or vestrymen, or lacking these, stated members shall be inspectors of election.

Such inspectors shall, after the election, certify under their hands and seals, the names of persons elected to serve as trustees or vestrymen, and the name by which the corporation shall be called shall be particularly given. The certificate may name those elected, trustees, vestrymen, executive committee or other name, so that they possess the powers of trustees. *Sec. 4619, 4620, 4621, How Stat.*

Such certificate shall be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to acknowledge deeds. This certificate and the articles of association shall be recorded by the County Clerk. Thereafter such trustees and their successors, shall be a body corporate by the name expressed in such certificate. *Sec. 4622 How Stat.*

At the first election provided for every person of full age who has signed the articles of Association may vote. *Sec. 4622 How Stat.*

Vestrymen and other officers given the powers of trust

by any church, have the same duties and possess the same rights as the trustees.

ELECTION ACCORDING TO CHURCH USAGE.

Whenever by the constitution, rules or usages of any particular church, trustees are required, such trustees shall be nominated and elected according to the constitution, rules and usages of such denomination. It is the duty of the officer presiding over such election, to give to such trustees a certificate of their election, under his hand and seal, specifying the name by which such trustees and their successors shall forever thereafter be called and known, which certificate shall be acknowledged or proved by a subscribing witness thereto, before some officer authorized to take acknowledgments of deeds, which certificate and acknowledgment shall be recorded by the County Clerk in a book provided for this purpose. Such trustees and their successors thereby become a body corporate. *See* 4647 *How. Stat.*

The above section requires a *meeting* of members, an *election* of trustees etc. Yet some clergymen *appoint* trustees without any meeting called for that purpose. A society so organized may by use grow into a lawful corporation. But the safer way is to elect trustees as the statute directs. The forms in the Appendix may be safely followed in this connection.

In organizing a society the statute should be substantially followed, and all the facts required to be stated in the certificate must be stated: *Ferraria vs. Vasconcelles* 23 *Ill.* 456; 29 *Wis.* 109.

(Corporations *de facto*, or churches that have been acting