

For the Colonial Churchman.

THE RIGHT OF TENURE AND INVESTITURE OF CHURCH PROPERTY.

Essay 7.

The tenure, by which the property, made over to the Church, was anciently held, was extremely simple both in its nature and character. It was invested by the donor in the Bishop of the district for the time being, with an understanding that the yearly produce or interest of the gift or bequest should be applied to the support of the Church in *perpetuum*. This kind of tenure implied to all intents and purposes that the Bishop held the patronage or disposal of the property thus bestowed.

Patronage, or the right to bestow for a limited period, led of course to the institution of livings or benefices, which was held, except in particular cases, by the incumbents for the period of their natural life. When a vacancy occurred, the usufruct was transferable to whomsoever the Patron or Bishop might see fit to appoint. I do not mean to affirm that there were particular laws and regulations enacted, at the early period of which we are speaking, for the direction of Patrons and Incumbents, as there have afterwards been introduced. Church property had not then given rise to any legislation of a lay character. Its tenure, and disposal for its intended use may therefore be said to have been invested in the patron; and the usufruct or annual produce of it may, in the same way, be said to have been a life-lease to the incumbent.

An event however occurred not long after the days of Constantine, which changed the nature and character of the tenure, by which not only Church property, but all other properties were held. In the latter end of the fourth and in the beginning of the fifth century, the nations, who then inhabited the northern parts of Europe, and who were in a state bordering upon barbarism, came forth, in countless hordes, from their fastnesses, overrun the whole of Germany, Gaul, and Italy, carrying devastation and destruction before them. Their ravages went so far as to extirpate the ancient inhabitants, or to reduce them to slavery. Early in the year 409, Alaric the Goth took possession of Rome, destroyed its inhabitants, and raised the eternal city to the ground. His warlike followers were rewarded for the toils and hardships which they had endured as well as for the homes which they had left behind them, with the richest and most fertile parts of the conquered territories. Their tenure was absolute and permanent; and inalienable so long as a descendant of the first proprietor remained to claim his right. These Lords of the soil settled again of course a portion of the land thus obtained on those who were willing to serve them. And the service, which was almost universally claimed, consisted in the duty of being ready at any time to follow the first proprietor to the field, and to fight his battles for him. The tenure by which these vassals held their land was extremely precarious; being only during the pleasure of the superior. This is by most learned men, considered to be the origin of what is called the feudal system; a system which universally prevailed in Europe during the middle ages and of which traces may still be discovered in the constitutions of some European kingdoms. See *Dr. Ridley's view of civ. and ecc. Law* pt. 1. cap. 4—also *Spelman's post. work* p. 5.

In the course of time the tenure of the vassal, which thus depended solely upon the pleasure of his superior, became by degrees to acquire a more permanent character. It was first extended to one year; and afterwards to the feudatory's life-time. And Hugh Capet, who usurped the French throne, in opposition to the race of Charlemagne, towards the latter end of the tenth century, and who founded the Royal House of Bourbon, made these tenures hereditary: because he was desirous of securing partisans among the rural population. The only return which he demanded consisted in the ceremony of homage and the oath of fealty. For his part he engaged to maintain them in these rights so long as they maintained him upon the throne. This took place in 988; and according to Sir Henry Spelman, afforded an example to William the Conqueror of the manner, in which he might most securely support and preserve his newly acquired kingdom of England.

However this may be, it is well known that he rendered the tenure of lands hereditary.

But to return. The Goths and vandals who were heathens did not of course understand the religion which had some time before been established in the empire. They therefore made no exception, from their general rule respecting tenures, in favour of Church property. And although they found it impossible to banish the knowledge of the Gospel from their new conquests; yet their proceedings and arbitrary enactments subjected its professors to great inconvenience and annoyance. For instance, the Bishop or Patron who had *ex officio* the management and disposal of Church property, was obliged to furnish his quota of men to fight his Master's battles; and it not unfrequently happened that he himself laid aside the mitre for a time and assumed the helmet and the lance. See *Calvin's Lexicon Juridicum* under the word *Feudum*.

Thus landed Church property continued after the Gothic invasion upon nearly the same footing on which the nature of the object in view, and of the means employed for its accomplishment, had originally placed it. We do not read any where that it was seized and misapplied. The only difference or change in its tenure consisted in the enactment which compelled the Ecclesiastical superior to contribute a share towards the exigencies of the State, as a proof of his fealty and obedience.

Now the law, by which Hugh Capet and William the Conqueror, rendered landed tenures hereditary, does not appear to have extended to church property. The Ecclesiastical tenure continued still to be held only for the life-time of the incumbent. The Bishop and the priest alike had only the usufruct of the benefice during their life-time. At their demise the living passed into other hands at the pleasure of the king or Emperor, who gave it conditionally to the next incumbent.

This was more particularly the case in regard to Bishops.—a circumstance which caused a long and bitter controversy between the Bishop of Rome and the temporal Head of the Empire, about investitures.

The Emperor or Lay-superior, upon the demise of an Ecclesiastical Dignitary, laid claim to the right of disposing of the usufruct of the church property, thus become vacant, to whomsoever he pleased. This claim was sustained on the ground, that no individual who did not owe allegiance and render homage to the supreme sovereignty of the empire, could, with any shew of Justice, assume the control and disposal of extensive lands, within its boundaries;—a tenet of state policy, which is acknowledged in the constitution of every civilized kingdom at the present day. The temporal Ruler for the time being urged his right to this privilege on another ground. He maintained that the property, originally bestowed for the service of the Church, had either been given, or confirmed by his Predecessors, for that purpose; and that therefore he had a hereditary right to dispose of the yearly revenue to whomsoever he pleased.

The right of nomination thus maintained and the custom, which naturally resulted from it, seem to have prevailed universally in the Church, for upwards of 600 years after the days of Constantine the great. It will be obvious however, that there were many circumstances, connected with this mode of disposing of Ecclesiastical dignities, which rendered it particularly liable to objection. The Emperors being for the most part engaged in wars, and matters of state, could not have been, in every respect, qualified to select, from among their subjects, the persons who were fitted to supply the vacant dignities of the Church. Accordingly in numberless instances their choice appears to have been singularly unfortunate. They often collated to Benefices and stations of trust in the Sanctuary, individuals who had nothing to recommend them but their Master's will: without learning, without parts, and not unfrequently stained with gross moral pollutions.

This source of abuse, more than once, called forth the censure of the Roman Pontiff, who had begun to assume great authority in the Christian Church. Pope Hadrian I. admonished Charlemagne on this subject, as Gratian informs us:—Dist: lxiii. c. 22. And Pope Leo viii. about the year 942 sent a remonstrance of a like character, to the Emperor Otto the Great, notwithstanding these efforts of the Roman Bishops, the right of presentation by the temporal

Head of the empire continued still to be a source of much abuse. Hence arose a fierce controversy on the subject, about the middle of the eleventh century, between Hildebrand, then Archdeacon of Rome, and Henry iv. Emperor of Germany. Hildebrand subsequently ascended the Papal chair, under the name of Gregory vii, and followed up the investiture contest with much acrimony of spirit. He laid claim to the right of Investiture or presentation himself, and supported this claim by such arguments as the following:

1. The Church being redeemed by the blood of Jesus Christ is free, and therefore ought not to be put in bondage.

2. By lay-patronage the church becomes a vassal to the Empire,—which is a usurpation upon the prerogative of God himself.

3. It is moreover unbecoming, and beneath the sacerdotal order and unction that Lands consecrated to the service of Christ, should be put into, and received from, hands stained with blood. For this, see Dupin's larger work, vol: x. p 25.

Upon these grounds a severe Canon was passed at a council held in Rome, of which Gregory vii. was President, in the year 1078, enacting that—"No Ecclesiastics shall receive investiture of any Bishoprick, Abby, or Church from the hands of Emperor, King, or any other Laic whatsoever: and that if he shall receive it, his investiture shall be null and void, and he shall be excommunicated till such time as he has given satisfaction for his offence."—*Can: 21.* of said Council.

Gregory vii. died without accomplishing his object. He was succeeded by Urban II. who continued the contest, and who deposed many Dignitaries on the ground, that their investiture proceeded from a lay-source. This contest was finally settled between Pope Calixtus II. and the emperor Henry v. about the year 1124. It was agreed:

1. That the election of the Bishops and abbots should be made in the presence of the Emperor and Princes of the Empire, and consequently by their consent.

2. That the Bishop elect should be invested with the Royalities—that is all the estates laden of the crown—by the Sceptre before his consecration.

3. That all the dues and services to which Bishops were obliged, by virtue of their feuds should still be preserved to the Empire.

4. That the Roman Pontiff should have a *veto* upon these proceedings by withholding consecration.

These articles are understood to prescribe the mode of election to vacant Benefices in Roman Catholic countries, at the present day: but they never gained any footing in England, notwithstanding the earnest endeavours of two successive Archbishops of Canterbury, Anselm and Becket, to introduce them.

The reader who may be desirous of obtaining more information upon this subject, is referred to *Dr. Brett's Treatise on Church Government*, p. 391 &c. and to *Dupin's abridgment of Church Hist.* vol: iii. p. 99 1c.

In my next I will endeavour to give some account of the additional sources of Church property, which were developed during the middle ages.

CRITO.

From "LITURGICA," by the Rev. John Ayre.

CONFESSION OF SINS IN THE LITURGY.

The minister is instructed to commence with one or more, according to his judgment, of those prefatory sentences of Scripture, which, though all tending to the same great end, have yet an observable difference of character, according with the various classes of persons presumed to be present. Thus, in the words of my text, and in the passage from Ezekiel, "When the wicked man turneth away from the wickedness that he hath committed, and doeth that which is lawful and right, he shall save his soul alive;" The ignorant are instructed in the merciful nature of Him who sheweth compassion to the penitent transgressor. In other sentences, such as "Repent, for the kingdom of heaven is at hand;" the careless are warned that God will not be trifled with, and therefore that it is not safe to delay the humbling of ourselves before him. In a third class, models of supplicatory address are presented to the penitent: "Hide thy face from my sins, and blot out all mine iniquities."