

There can be no doubt that on the promotion of the incumbent of a benefice in England, to a bishopric in England, the benefice is so avoided, and it belongs to the Queen to present to the benefice avoided. This is clearly a prerogative of the Crown, whatever may have been the reason for it, and however it may have been acquired. It rests upon uniform usage, and is supported by so many *dicta* of our text writers and decisions of our courts of justice, that it cannot now for a moment be questioned. The prerogative is stated likewise to extend to the bishopric of Sodor and Man, not within the realm of England, although held under the Crown of England, that see having been immemorially a see of the Church of England, anciently attached to the province of Canterbury, and more recently to the province of York. Whether the prerogative likewise extends to the case of an English incumbent promoted to a bishopric in Ireland has been considered a question of great doubt. In "Mallory's Quare Impedit," 113, the learned author says that "*de jure communi*, all promotions are vacated by the taking of a bishopric as such, and that not only English promotions to bishoprics in England, but likewise English promotions to bishoprics in Ireland, and *vice versa*," the consequence no doubt being understood to be that the Crown would be entitled to present to the vacant benefice. So, in "Gibson's Codex," vol. i. lib. xxxiii., cap. 2, it is said, "Upon promotion of any person to a bishopric in England or Ireland, the King hath a right to present to such benefices or dignities as the person was possessed of before such promotion." On the other hand, Lord Coke (4 Inst. 356, 7), commenting upon the case in which the Bishop of Exeter was fined for his contempt in not admitting the King's presentee to an archdeaconry within his diocese, which the archdeacon had vacated on being promoted to be Archbishop of Dublin, says; "That when the archdeacon was by the King preferred to an archbishopric, he (the King) has the presentation to the archdeaconry in respect of the temporariness of the Bishop of Exeter, patron of the archdeaconry, and not by any prerogative. And so it is if an incumbent in Ireland be made a bishop in England." The temporalities of the see of Exeter had then been in the Crown, the see being vacant; and in this right alone had the Crown the power to present to the archdeaconry; but if there had been a Bishop of Exeter, in whom the temporalities were vested, he, and not the King, would have been entitled to present to the archdeaconry, on the archdeacon being promoted to be Archbishop of Dublin. Lord Coke considers England and Ireland, with a view to the "cession" of ecclesiastical preferment on promotion to a bishopric, as different kingdoms and different churches, although under the same Crown. With reference to this Lord Chief Baron Cronyn, in his "Digest, tit. 'Eglise' (H. 6)," after stating that if an English archdeacon be created a bishop, the King shall present to the archdeaconry, and citing for this his authorities, adds, "Dubitatur, 4 Inst. 356, 7." This doubt seems much strengthened by the Irish statute, the 17th and 18th Car. II., c. 10, for preventing clergymen holding preferment in England but at the same time holding preferment in Ireland, and from the practice which seems to have followed thereon of clergymen always resigning it before they are promoted to be bishops in Ireland. But we do not think it necessary further to examine the authorities relating to this controverted question, or to give any opinion upon it: for were the rule clear and undisputed, that if the incumbent of a living in England is promoted to a bishopric in Ireland the Crown shall present to the English living, we think the consequence would by no means follow that the Queen has a right to present to the church of Stratfield-Mortimer on the Rev Henry John Chitty Harper being appointed and consecrated Bishop of Christ Church, in the colony of New Zealand, although "the same be within the and part of the dominions of our said Lady the Queen." To establish this proposition we may expect either some express authority, or the explication of some principle which brings such a colonial bishopric into the category of English and Irish bishoprics for this purpose. Express authority there is none. The general *dictum* that if an incumbent is made a bishop the Crown shall present to his preferment thereby vacated, cannot be relied upon; for this evidently was meant to be understood of English preferment, and an English bishopric, and the same writers who lay this down say that the rule does not extend to a titular bishop or a suffragan bishop, under the statute the 21st of Henry VII., cap. 14. See "Mallory, 113, Com. Dig. tit. 'Eglise' (U 1)." Nor has any principle been announced upon which the rule rests in respect of an English and Irish bishopric, and which would apply to this bishopric in New Zealand. The English and Irish bishops hold bishoprics founded and endowed by the Crown; they are prelates of a Church which is the established Church in England and Ireland; they have by law well-defined jurisdiction and important rights and privileges, both spiritual and secular. The Bishop of Christ Church in New Zealand has nothing in common with them, except that he is a Protestant bishop canonically consecrated, and holding the faith of the Anglican Church. We do not question the power of the Queen to create a bishopric in any part of her dominions, except where, as in Scotland, such an exercise of prerogative is forbidden. In a newly settled colony such an exercise of prerogative is lawful, but we must bear in mind that in such a colony there is no established Church, and that the ministers of religion in communion with the Church of England, with the Church of Scotland, and with the Church of Rome, in the absence of any imperial or colonial legislation on the subject, are all upon an equal footing. If by legal enactment there were a fund created for the support of "the Protestant clergy in New Zealand," according to the opinion given by the judges in the House of Lords upon the Canada Reserves, the Episcopalian and Presbyterian clergy in the colony would be entitled to have it in equal proportions. It has likewise been held that the Crown may create an ecclesiastical Roman Catholic corporation in an English colony, as well as a Protestant bishopric. The bishopric of Christ Church, in New Zealand, has been created purely by the prerogative of the crown, without any such statute as 53 George III., cap. 155, or 3 and 4 William IV., cap. 85, which authorised the Crown to grant jurisdiction to bishops to be created in India, and to establish a hierarchy in that country, as had been before done in Jamaica and other parts of the dominions of the Crown in the West Indies. We by no means say that the promotion of an English incumbent to be a bishop in the East or West Indies would give the Crown a right to present to his English preferment; but there is great difficulty in saying that the bishop of Christ Church, in New Zealand, has any jurisdiction except over those who voluntarily submit to his jurisdiction; and he really seems in this respect to be in the situation of the "titular bishop," whose promotion to be a bishop all the authorities agree, gives the Crown no right to present to his preferment. Had the declaration been sufficient in showing a *prima facie* right in the Crown to present to this living on the promotion of the incumbent to a bishopric, we should have had no difficulty in deciding that the plea is bad, for, although the advowson was granted by the Crown to Eton College, and the grant was confirmed by

Parliament, the claim to present on such vacancy would be an incident of the right granted, and not a derogation of the grant. But being of opinion that the declaration shows no title in the Crown, and that the right to present to the living was the same as if the vacancy had arisen upon the death of the incumbent, it is our duty to give judgment for the defendants.

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### English Ecclesiastical Intelligence.

SOCIETY FOR THE PROPAGATION OF THE GOSPEL IN FOREIGN PARTS.

79, Pall Mall, Jan. 8, 1858.

The Society is desirous that the large meetings which have been held in London, in aid of the Indian Missions Extension Fund, should be followed by similar meetings in every important town, and wherever any special interest for Indian missions exists. The aim of the Society is to raise an additional income of £30,000 per annum, and to double the present number of missionaries in India. It is obvious that this cannot be effected without the most strenuous efforts of the friends of the Society to procure new subscribers from among their own connexions and in their own neighbourhood.

In making this special appeal for India, the Society is constrained to express a hope that its subscribers will not appropriate to India any of their ordinary subscriptions to the General Fund, or any collections which would, under ordinary circumstances, be sent to the General Fund. Such a course, if generally followed, would greatly embarrass the Society. It is recommended that meetings and sermons, in aid of the Indian Missions Extension Fund, take place at a convenient interval before or after the regular meeting or sermon in aid of the Society's General Fund.

The following extract is taken from a report just received from the Rev. C. E. Driberg, missionary at Tolly-gunge, near Calcutta:—

"Tolly-gunge is considered the head-quarters of the Mission, as it is the residence of both the missionaries, the Rev. Mr. Babonau (Deacon) and myself; and from hence we sally out to visit and inspect the other circles. The Christian community here is very small. We have a central school for the children from all the Society for the Propagation of the Gospel Missions. There are at present thirty pupils who are boarders, and some day-scholars. Most of the former are orphans. The senior pupils have all recently left the school; one as tender to the Baripore Mission, one to the medical college in Calcutta; three have been sent as apprentices to the press at Bishops' College; there are two, however, of the elder boys who are prosecuting their theological studies under my coadjutor, Mr. Babonau, with a view of qualifying themselves to labour in the Mission field. The thirty now in school are chiefly young children.

"Tolly-gunge is a large Mohamedan town. The Mysore princes are kept here, and with their families and dependants make up a large number. One of the princes has been my pupil ever since I have come here. I am now instructing his son also, a lad of sixteen, though no religious books are read. I have frequently interesting conversations with the father on the subject of religion.

"Since the breaking out of this terrible mutiny and rebellion, all Missionary work at Tolly-gunge itself (I mean among the Mohamedons and Hindus) is entirely stopped for the present. The people were in such a state of mad excitement (when the news of the awful tragedy of Meerut and Delhi first reached us), at the prospect of the restoration of the Mohamedan rule, that it was