The Parson's Freehold

By A. Tindal Hart

THE much publicized Spaxton case and the new Pastoral Measure shortly to be laid before the Church Assembly, whereby a sitting incumbent, after receiving adequate compensation, could willy-nilly be removed from his present parish in order to make way for a team ministry, whose " vicars " would hold office only for a term of years " laid down by the bishop's licence ", have raised again in an acute form the whole question of the Parson's Freehold.

Whatsoever were the legal or moral rights and wrongs of the Spaxton affair : whether, as has been suggested, it was " a highly successful attempt at all stages, regardless of natural justice, to maintain the Establishment ", or that a reluctant bishop was driven into taking legal action, which was distasteful, costly, and highly damaging to himself, it has proved once and for all that as long as the freehold persists in its present form similar judicial processes, with all their attendant publicity and expense, will have to continue to operate as much under the new highly vaunted Ecclesiastical Jurisdiction Measure of 1963 as they did with the old Incumbent's Discipline Act of 1947. The Bishop of Leicester put the case very fairly for his side when he said : " One of our great problems is that the laity, now articulate and used to business methods, cannot understand why bishops cannot solve these problems. By the time they reach the bishops' ear the bishops are powerless. People do not realize how limited are a bishop's powers in a church which they wrongly think is episcopally governed. Every bishop knows how little power he has to deal with refractory cases without recourse to the force of law ".

As a possible way out of this impasse Convocation has now asked the Deployment and Payment Commission, which is at present examining *The Paul Report* with a view to recommending how certain of its suggestions, including the one substituting " leasehold " for " freehold ", can best be implemented, to add to its labours by " looking into ways of removing a clergyman from a benefice in his own as well as the parish's interest, after due inquiry, and of offering him a post elsewhere ".

Should these proposals ever become law : namely, the right to remove an incumbent because he is either obstructing pastoral reorganization or is a " misfit " in his parish, and to licence " vicars ", possibly even " rectors ", for a term of office only, then the path of the " Establishment " would certainly be a very much smoother one than it is at present ; particularly if all this can be carried through without unnecessary fuss, publicity, and inordinate expense. Bishops will no longer feel " frustrated " and the " turbulent " or " awkward " incumbent a *persona defuncta*. Such a state of affairs would certainly have delighted the heart of the late Archbishop Garbett,

always an ardent champion of pastoral reorganization, who once suffered the following humiliating experience : He had at the time in his archdiocese an elderly vicar, who was causing him a considerable amount of trouble. One day the archbishop called at his vicarage and said : " Mr. —, the time is getting on for you, and perhaps it would be a kindness to yourself as well as your parish if you were to retire ". " Your Grace," was the reply, " you are an old man and so am I, and if you will give the lead by retiring I will follow your example ". Garbett left the house without another word.

" Gadflies " like the Rev. Christopher Wansey may well cease to exist. As he himself recently remarked, it was not very safe even now to criticize the ways of your elders and betters within the Church of England. " But," he added, " it was easier for those who had said goodbye to any hope of preferment ". Soon it may be a case of saying goodbye to your present benefice as well. The Church, we are told, welcomes constructive criticism ; but almost invariably such " constructive criticism " is expected to conform to the general pattern set down by Authority. None the less the pill is to have a coat of sugar, since the deprived incumbent will be entitled to compensation either in the form of another job, a pension, or a lump sum of money. It is of interest to note in this connection that when in the fourteenth century a monastery wished to appropriate a rectory, the bishop appointed two or more clergymen to hold an inquiry in the parish concerned. The depositions of all the interested parties were taken down in writing before a sworn jury of local clerks and laymen, and sent to the diocesan, who on the evidence of their findings decided the case. Should the appropriation then be allowed, as it usually was, he would insist on an annual pension of two shillings being paid to the dispossessed rector.

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At this stage it might be of interest to give a brief sketch of the history of the freehold. It originated in Saxon tribal and Norman medieval law and custom. For just as the serf or villein owed services to his master in return for his strips of land in the common field ; and the lord held his manor from the king provided he fulfilled his feudal obligations ; so the rector received his tithes and possessed his glebe as long as he conducted the statutory services of his church and obeyed canon law. His independent status and income, in fact, were guaranteed and he could not be deprived of them if he, or a deputy nominated by him, adequately carried out the duties of his calling. On the other hand, in the later Middle Ages at any rate, an incumbent was very much more subject to episcopal discipline than has generally been supposed. The rural deans, who then formed an important link in the chain of diocesan administration, were expected under pain of possible deprivation themselves to denounce to the bishop or his official any crimimous clerks in their chapters. These men must first be rescued, if need be, from the secular authorities and then housed in the bishop's prison, which was usually attached to his palace, where they remained until they died, escaped, or proceeded to canonical purgation. " The keeper of the episcopal prison was instructed to produce a clerk who wished to proceed to purgation at the hour and

place appointed and, should he be liberated in accordance with the law of Holy Church, to permit him to go free. Whether a clerk was actually admitted to final purgation depended upon the findings of the commissary appointed to deal with the case. If he was, then sentence was pronounced in accordance with the outcome of the purgation. If successful he was restored to his original good fame, freed from episcopal gaol. . . . The clerk who failed in his purgation was probably left in the episcopal gaol."[1]

Unlike Archbishop Garbett, the medieval bishop could also sequestrate the benefice of an elderly incumbent and appoint a chaplain to carry out his duties, provided the old man was still allowed to live in his parsonage and received an adequate pension.

One of the least attractive features of the Reformation, particularly after the dissolution of the monasteries, was the lowering of the status of the clergy in the eyes of the laity, together with a rapid growth in the secularization of society as a whole. It was true, of course, that the church courts remained very active ; but all too often in the minds of the new property-conscious classes that had now sprung into existence, a benefice came to be regarded more as a financial investment than a cure of souls, whose income would come in whether the duties were fulfilled or not. The churchwardens could and did present their parsons at the bishop's or the archbishop's visitations for negligence or misconduct, and later prosecute them in the ecclesiastical courts ; but normally a conviction would be followed by nothing more severe than an admonition, a fine, or a penance. It required a very serious offence indeed either against the laws of church or state to merit a deprivation *ab officio et beneficio.*

However, during the brief hour of Presbyterian triumph in the seventeenth century a very much graver view was taken of such things as drunkenness, immorality, profanity, or a failure to perform one's ministerial duties to the satisfaction of one's congregation. For the lay elders, who ruled the parish with a rod of iron, unlike the Anglican churchwardens, did not hesitate on their own authority to admonish and even suspend their pastor from his ministerial functions, prior to his trial before the local classis. Had Presbyterianism been able, as it was not even during the period of the Great Interregnum, to entrench itself permanently as the Established Church of this country then the parson would *ipso facto* have become very much more vulnerable both to his own congregation and to ecclesiastical authority than ever before or since. But in fact the experiment was neither sufficiently widespread nor of long enough duration to indicate with any sort of precision the kind of radical effect it might well have had upon the freehold. The rise of Independency and the return of Anglicanism nipped it in the bud.

As it was, with the gradual decay of the church courts, which, although revived at the Restoration, never recovered their pristine vigour and gradually sank into a state of lethargy, the emergence in all its glory of the doctrine of laissez-faire, and an increasing insistence upon the sanctity attached to every kind of property, particularly

[1] R. M. Haines, *The Administration of the Diocese of Worcester in the first half of the 14th century*. p. 186.

landed property, the eighteenth century rector or vicar was to enjoy almost complete freedom from diocesan interference or congregational control. The ambition indeed of every clergyman, who could not hope to aspire to a dignity, was to find a "good" living: since this meant in effect an "independency" that could be enjoyed unchallenged for the rest of his life. In the recently published journal of the Rev. William Bagshaw Stevens, which was written up between the years 1792 and 1800, we find this learned gentleman, who was already a fellow of Magdalen College, Oxford, the Headmaster of Repton, and the chaplain at Foremark, the Derbyshire home of the Burdett family, continually bemoaning his hard lot, his subservience to the "odious" Sir Robert Burdett, who compelled him night after night to make a fourth at the whist table and treated him as little better than a servant, and expressing a deep longing for "an independence" —that is, a good benefice. As soon as he or any of his scouts heard of a vacancy, an incumbent who was sick, old, or likely to receive promotion, he immediately bombarded his friend and patron, Thomas Coutts, the banker, with letters asking him to use all his influence with the Lord Chancellor, the Crown, or the bishop to secure the much coveted prize. How piously he prayed during the hard winter of 1795 that some of his aged and sick colleagues might "drop"; but, alas, they proved tougher than he had supposed. It was not until towards the very end of his comparatively short life that he secured the two small livings of Seckington and Kingsbury in Warwickshire, although he had aimed his shafts at more than twenty others in less than ten years. Competition was very keen. Here is a typical entry from the journal: "15 January 1794. C. Hope recovering. I must direct my eyes to some other quarter. The living of Hogs Norton in the gift of the Chancellor will become vacant. Its incumbent very old, very infirm. His Apothecary says Art cannot keep him alive above 6 months. Dalby has provided to obtain the earliest intelligence of his Death. Foremark has been to me an Ungrateful Vineyard, but a little longer will I dig about it and dung it and if it bear fruit well!"[1]

Incumbents could be thoroughly bad men, lazy men, drunken and immoral men, even madmen; but even after they had undergone short prison sentences it was almost impossible to get rid of them. A particularly notorious case was that of the Rev. Edward Drax Free, who had been Dean of Arts and Dean of Divinity at St. John's College, Oxford, from 1792 to 1797. Here he proved himself such a thorn in the side of the President and other officers that the College at length got rid of him by presenting Free to the College living of Sutton in Bedfordshire. There, too, he was soon in trouble through the irregularity of his services, the scurrility of his sermons, swearing, and excessive drinking. He devastated the glebe by cutting down groves of trees without permission from the College, took the lead off the church roof, and uprooted gravestones in the churchyard. Above all, he fathered bastards upon a succession of servant girls. In the end one of the churchwardens, Montague Burgoyne, instituted proceedings against him in 1823. but the case had to go through five courts before

[1] *The Journal of the Rev. William Bagshaw Stevens*, ed. Georgina Galbraith, p. 127.

Dr. Free was finally defeated in the House of Lords during 1830. As Burgoyne himself recorded: "The delay proceeded from the insufficiency of our ecclesiastical law, the total want of power in the Diocesan to stop such misconduct or to call to account such an offender as Dr. Free."[1] Yet, even after sentence of deprivation had actually been passed, Dr. Free refused to quit what he sincerely believed to be "his property", barricaded himself with one of his mistresses into the vicarage, and threatened anyone who approached too near with a pistol. Eventually he was starved into submission.

As regards mad parsons, there is the very much later story of a young curate named Westbrook, who called one day at a crumbling Suffolk vicarage. "For one moment it gave the impression of a Palladian mansion, a great, civilized eighteenth century pile, and then the boarded up windows obtruded themselves, the peeling stucco, the damp stains, the broken drain pipes, the overwhelming impression of decay." A filthy old crone opened the door and, pointing up the rickety, carpetless stairs, informed him that the vicar was in bed. "The room was illuminated by a single paraffin lamp standing on a table at the side of a large bed. The lamp cast a yellow uncertain light, and there was black soot all up the side of the chimney. The only window in the room had been completely boarded up. so that not a gleam of light penetrated from the outside world. The bed had over its further end a vast canopy like a baldachino, and under it supported by cushions, was a small, wizened figure, wearing a black skull cap. At the same time Westbrook was aware of an appalling smell which took him by the throat . . . as his gaze travelled round the room he saw two dogs, a bloodhound and a cairn terrier, several cats . . . a tumbler pigeon on the rail at the foot of the bed and, suddenly waddling out from under the bed, a Muscovite duck . . . the pigeon launched itself from the foot of the bed, flapped wildly round, and finally came to rest on the top of the canopy. 'That,' said the figure on the bed with an eldritch cackle, 'is the Holy Ghost'."[2] And, apparently, the bishop could do nothing about it!

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After the Reform Act of 1832 Parliament set about cleaning out the Augean stables of the Establishment; and one of the measures it passed was the Clergy Discipline Act of 1840, which empowered the bishop, sitting with assessors to try a criminous clerk and pronounce a sentence that was good in law. He was also granted the right, in cases of great scandal, to suspend an incumbent from his duties until such a sentence had been arrived at. The Public Worship Regulation Act of 1874 provided for a similar procedure in matters of ritual; and another Discipline Act in 1892 greatly extended the range of moral offences, including drunkenness, for which a clergyman was made liable to prosecution. Furthermore an incumbent who had been convicted in a temporal court of felony, had had a bastardy order served upon him, or was proved during divorce proceedings to have committed adultery, automatically lost his benefice. None the less beyond the

[1] M. Burgoyne, *A Letter from Montague Burgoyne to his Brother Churchwarden*. London, 1830.

[2] John Callender, *Company of Heaven*, pp. 177 *f*.

statutory duties defined in the 1662 Act of Uniformity, no one could compel an indolent incumbent to do anything more for his parishioners except of his own free will. The Benefices (Ecclesiastical Duties) Measure of 1926, reinforced by the Incumbent's Discipline Act of 1947—both of which are now superseded by the Ecclesiastical Jurisdiction Measure of 1963—were designed to remedy such a situation and ensure that negligent or incompetent parsons were brought to book.

In face of some of the appalling clerical scandals which, ever since the breakdown of the old church courts, have occurred in the past (and indeed the not so very distant past either) an impartial observer is bound to admit that legislation of some kind was certainly necessary. The power of the bishop-in-council over his clergy needed to be increased. Today, however, the pendulum appears to be swinging far too much in the opposite direction. For should it ever become possible for the Establishment at will, quietly and without fuss, publicity, or expense to move a beneficed clergyman against his own inclinations from one parish to another, or to be able to sack him on the specious grounds that he is a " misfit ", a " trouble-maker ", or simply because he seems to be standing in the way of progress, it will be a sad day for the essential freedoms of the individual Anglican priest, which have always been, even if at times abused by a very small minority, one of the glories of the Church of England.

The parson's freehold, once so stoutly defended by Archbishops Laud and Sancroft against a greedy squirearchy, anti-clerical common lawyers, and a presbyterian-minded congregationalism, is again in jeopardy. In a recent and much publicized dispute between a diocesan bishop and one of his incumbents over a doctrinal matter, the former is reported to have said to his archdeacon : " If it hadn't been for the freehold we could have dealt with him immediately and effectively ". Such words are dangerous.

Pressed between the upper and the nether millstones of the " Establishment " on the one hand and his own parishioners on the other, the parson is in danger either of becoming a mere cog in the machine or everybody's dogsbody, or both. Innumberable matters that were once dealt with as a matter of course by the incumbent at parish level, acting purely on his own authority and guided solely by his own conscience, are now expected to be referred to his diocesan, whose judgment must be accepted as final. Acts of Convocation are being endowed with a legal force that they do not in fact possess ; clergy are snowed under with directives from above; the rural deanery or the group of parishes rather than the single benefice is becoming more and more the unit of diocesan administration ; and the Oath of Canonical Obedience is being invoked to cover an ever widening field of episcopal activity.

The parson, too, can so easily become, is in some instances already becoming, the slave of his own parochial church council, which on an ever-increasing scale is being expected in one form or another to supplement his income. He who pays the piper calls the tune ; and as the Welfare State has taught the average layman that he must at all costs expect value for money, the cries of " I want " and " it is my right " are now to be heard not only on the factory floor, within

schools and universities, and at the doctor's surgery, but also in the parson's study. As never before in history the man in the street has become organized, articulate, aggressive; and he is not slow to note that every type of "authority", particularly ecclesiastical authority, that so badly needs his help and money, is not only afraid of him, but quick to appease him, even if necessary at the expense of their own faithful servants.

Despite its much advertized abuse, which is now very largely a thing of the past, the parson's freehold has served the Church well. It enabled both the Evangelical Revival and the Tractarian Movement to establish themselves in the parishes during the nineteenth century. It gave to clerical social reformers of the type of G. S. Bull, A. W. Hopkinson, F. W. Tuckfield, and Conrad Noel the opportunity, which would certainly otherwise have been denied them, of sowing the seeds of liberalism and humanitarianism within the Church of England. Nor, as the late Archdeacon of Aston reminded the readers of *The Times*, would any "modernist" have survived in a benefice without it.

In fact, because of the freehold the comprehensive nature of the Establishment, uniting so many differing shades of ecclesiastical opinions beneath its far-flung umbrella, is still vigorously alive. But, should this "independence" be gradually whittled away, and all initiative and responsibility drained away from the parson, then it is extremely doubtful if it would survive for very much longer. Deprive each incumbent of his proud and age-long rôle as the "persona" of his parish and the unhampered leader of his people; strip him of his freedom of choice and freedom of action; reduce him to the status of a mere pawn in the game, to be lightly sacrificed if need be on the altar of expediency or in order to placate a selfishly arrogant "affluent society", and what have we left? A poorly paid employee; with no security of tenure, desperately striving to serve two masters: his ecclesiastical superiors and his lay parishioners; and satisfying neither of them. Would such a situation, if it ever came into being, be of any kind of encouragement to would-be ordinands? Historians have argued in the past that the chronic shortage of clergy following the Reformation in the sixteenth century was due to the poverty of livings. It is now beginning to be realized that this was only partly true: it was the lowered status of the priesthood, the contempt in which the average clergyman was held by the laity that caused parents to have their children educated for some other profession. "Young men," wrote Bishop Jewel, "are weary and discouraged, they change their studies: some become prentices, some turn to physic, some to law: all shun and flee the ministry". But by the beginning of the seventeenth century, when the clergy had increased their learning and were once again reasserting their authority in their parishes, their numbers rapidly increased. There is a chronic shortage of clergymen today. May not the disease, together with its remedy, be the same?