

ECCLESIASTICAL PATRONAGE IN THE MEDIEVAL PERIOD

With special reference to parochial benefices
in Scotland.

A thesis presented to the University of Glasgow
for the degree of Doctor of Philosophy

by

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November, 1959.

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PREFACE

In submitting this thesis, I should like my first word to be one of thanks to my Supervisor, Emeritus-Professor W.D.Niven, for introducing me to a subject of absorbing interest, if of very great complexity; and for the kindness, encouragement and guidance which I have received from him through the years.

I should also like to express my indebtedness to scholars in other parts of the country who have helped me with information and advice; especially, Dr. Annie I Dunlop, and Dr. Kathleen Major (Principal of St. Hilda's College, Oxford); Professor Frank Barlow (Exeter), Mr. G.W.S. Barrow (London) and Professor J.H. Baxter (St. Mary's College, St. Andrews); the late T.M. Cooper, Lord Justice-General; Mr. Ian Cowan, Dr. Gordon Donaldson and Dr. Robert Donaldson (all three, of Edinburgh University); the late Dr. David E. Easson (Leeds); Professor David Knowles (Peterhouse, Cambridge) who replied to my inquiries after consulting with Professor C.R. Cheney (Manchester); and Professor E.L.G. Stones (The University of Glasgow).

The scope of this inquiry is sufficiently indicated in the Introduction. As to the method, I have tried to follow my Supervisor's advice and set developments in church organisation in Scotland in their wider European context. Just how effectively this method can be employed is seen in the learned introduction which the late Dr. Joseph Robertson contributed to the Bannatyne Club edition of "Concilia Scotiae"

In conclusion, I would express my gratitude to the Archivists at Durham and Lincoln Cathedrals, the trained staff at the National Library of Scotland and H.M. General Register House, Edinburgh, and to the University Librarians at Glasgow, Edinburgh, St. Andrews and Aberdeen.

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I.

INTRODUCTION

Much has been written of ecclesiastical patronage in the later stages of its development in Scotland, but the medieval period has been strangely neglected. This study is concerned with the four centuries immediately preceding the Reformation in Scotland, and attention has been focussed on the patronage of parochial benefices. The inclusion of monastic and cathedral foundations would have widened the field too much. What one is attempting is to offer something by way of introduction to the study of parochial church patronage in Scotland during this period.

In the time of Queen Margaret and her sons, the Church in Scotland was almost completely reshaped. There were introduced customs and institutions which had a long history of growth and development elsewhere. The institution of patronage is one example of this. It was not an indigenous growth in Scotland, but was introduced largely under Anglo-Norman influence about the beginning of the twelfth century. It was part of the Anglicization or Romanization of the Church in Scotland which took place at that time.

While we are concerned with the operation of church patronage in Scotland during the period indicated, attention

must be given to its continental antecedents. The institution had been in existence for several centuries before it was introduced to Scotland; and during that time it had undergone many changes, as it adapted itself to the conditions, social and political, in which it had to work. It is impossible to understand the significance of its development in Scotland without knowing something of its previous history, "The reign of David I", writes Hume Brown, in a passage quoted with approval by Bishop Dowden, "is perhaps the most important in Scottish history, as it was mainly by his endeavours that Church and State took the form which they retained throughout the Middle Ages. But the work of David was purely imitative, and it can be understood only by reference to the developments of the other countries of Christendom."¹

Our first task, then, must be to enquire how ecclesiastical patronage was established; and what transformations it had undergone prior to its introduction to Scotland.

(1) Dowden, *Medieval Church in Scotland*, p.3., n.I.

II

THE EARLY HISTORY OF CHURCH PATRONAGE

In seeking to investigate the beginnings of church patronage, we are dealing with a subject which has received much attention from French and German scholars during the past fifty years. It is much more recently that English historians have realised the importance of this field of study.

Dr. Ulrich Stutz spent a lifetime of research on the subject of "the proprietary church". "Eigenkirche" was the word which he found convenient to describe his meaning. "Ecclesia propria" is the description of the Latin documents. Stutz' two books, "Die Eigenkirche als Element des mittelalterlich-germanischen Kirchenrechts", now accessible to English readers in Geoffrey Barraclough's recent translation; and "Geschichte des kirchlichen Benefizialwesens", both published in Berlin in 1895, have been described as marking an epoch.

About the same time the French scholar, Imbart de la Tour, was investigating the development of church patronage in

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- (1) F.M. Powicke, *The Thirteenth Century* p.463, speaks of "this important and neglected aspect of ecclesiastical jurisdiction." M. Morgan, *The English Lands of the Abbey of Bec* p.31, says "the history of ecclesiastical patronage in England is still unwritten."
- (2) G. Barraclough, *Studies in Medieval History*, Vol. II, pp.35-70.

France. The results of his researches which appeared first in the "Revue Historique"^{1.} were later published as "Les Paroisses Rurales dans l'ancienne France", and form an interesting basis of comparison with Stutz' work. In "Le droit de propriété des laïques sur les églises", Paul Thomas covers much the same ground, though with a more strictly legal interest.^{2.}

These are still the principal works, but there is a vast and growing literature on the subject.³ While there are many unsettled points of controversy, there is a history of patronage which can be traced with some degree of precision, and it would probably be true to say that the general conclusions drawn by the writers whom one has mentioned remain unchallenged. In what follows I propose to indicate these conclusions.

(1) Revue Historique, vols. LX, LXI, LXIII, LXVII, LXVIII.

Les Paroisses Rurales. (Paris 1900).

(2) Le droit de propriété.....(Bibl. de l'école des hautes études, vol. 19, 1906.)

(3) Hartridge, Vicarages in the Middle Ages. (Cambridge, 1930); Colvin, The White Canons. (Oxford 1951); S. Wood, English Monasteries and their Patrons in the Thirteenth Century. (Oxford 1955); English Historical Review, Vols. xxiii, 116 and lxvii, 481; Esmein, Histoire du Droit Français, p. 154; Lesne, Histoire de la Propriété Eccles. en France, Vol. I, p. 70; Revue Historique de Droit, t. iv, p. 254.

Professor David Knowles very kindly called my attention to G. Mollat's, "Le droit de patronage en Normandie du xie au xv siècle", in Revue d'histoire ecclésiastique, xxxiii pp. 463ff.

The Christian Church is a divine institution drawing her life from above, and having an aim that is supernatural. Yet her sphere of activity is in this world, and at every period in her history she has been influenced by the political, economic and legal environment in which she has carried on her work. The Roman Empire, the Feudal System and the Modern State; each has left its mark on the Church.¹

Thus E.W. Watson remarks that "while the episcopal government of the Church was imitated from the bureaucratic system of the Roman Empire, as it was devised by Diocletian and perfected by Constantine the Great, the parochial system is of Teutonic origin; and the adjustment of the two forms a great part of Church History."²

And P. Thomas comments in a passage which illumines much that is to come, "L'Eglise elle-même, qui avait une autre origine, une autre destination, une autre nature que la féodalité, subit si profondément l'influence du milieu social où elle devait vivre, qu'elle finit par faire corps avec le système féodal et à en consacrer les abus."³

(1) Barraclough, op.cit., p.35.

(2) Ollard and Crosse, Dictionary of English Church History, pp.441-442.

(3) Thomas, op.cit., p.II.

The scheme of church property law which prevailed in the early Christian empire was a highly centralised system of administration. According to W.W. Buckland, the "church" of a city was recognised as a "collegium" with the bishop at the head, capable of owning and acquiring property by will or otherwise.¹ Within his diocese the powers of the bishop were great. He was the sole dispenser of the revenues of the diocese, the sole proprietor of church lands and goods. The diocesan clergy ministered in his name, and received as their maintenance the stipends that he allowed them.²

This urban and centralised system which developed within the context of the Roman Empire, and was suited to an age advanced in commerce and orderly government was gradually replaced by a grouping of churches based not on the authority of the bishop, but on the relationship between churches and their owners.³ In the centuries following the overthrow of the Roman Empire the conception gradually prevailed that if a man built a church upon his land, it remained his property. He had the right of appointing its priest and of administering its

(1) W.W. Buckland, A Textbook of Roman Law. (2nd. editn., Cambridge 1932), p. 177.

(2) E.W. Watson, The Development of Ecclesiastical Organisation and its Financial Basis, Cambridge Medieval History, vi, 528.

(3) D. Knowles, The Monastic Order in England p. 563.

revenues. The church was a source of profit to its owner. Here we have the origin of lay patronage. "The right which from the twelfth century onwards appears as a mere right of patronage...is in origin an ownership of the soil upon which the church stands and an ownership of any lands or goods that have been set apart for the sustenance of a priest who offers sacrifice at the shrine....It is long before the founder's right is whittled down to patronage."¹

The various theories as to the origin of these owned churches may be studied in the works to which reference has been made. Stutz found an explanation in Germanic custom, in the status of the pagan temples. The Christian lord had the same rights over his church as his ancestors had over their pagan sanctuaries.² For Imbart de La Tour, encroachment and the natural evolution of the idea of patronage accounts at once for the owned church and the later transformation of

(1) Pollock and Maitland, History of English Law, Vol. I., p. 497. Also for this whole paragraph; Cambridge Medieval History, Vol. VI, pp. 530-553; J.P. Whitney, Hildebrandine Essays, pp. 4-6; Knowles, op. cit., p. 564; Hartridge, op. cit., p. 2.

But the English writers are mainly following Ulrich Stutz.

(2) Stutz, Geschichte des Kirchlichen Benefizialwesens, p. 89 ff.

of public churches into private property¹. Thomas regards the claims of proprietors as resting mainly on the "jus soli"². The church was simply an appurtenance to the land like a mill or a bakehouse.

In his introduction to "The Lincolnshire Domesday", Sir Frank Stenton lists church and mill among the profitable appurtenances to a manor. "Among the miscellaneous sources of manorial revenue, mills were the most important..... Like a mill, a church was usually a source of profit to some owner."³

(1) Imbart de La Tour, Les Paroisses Rurales, p. 176ff.

(2) Thomas, Le droit de propriété..., pp 28-31.

E. Lesne takes the view that many factors combined to produce the private church. "The original right of the proprietor of the 'villa' on his private oratory, of the founder of the church built at his expense and on his own land, the usurpation by the master of the domain of the rights which the bishop had reserved for himself on the church which he had consecrated, the protection accorded by the laity to the person of clerks, then to the church, to the parish.... these are the elements the combination of which caused the private church to appear." (Histoire de la propriété ecclésiastique en France, I, p. 77).

(3) The Lincolnshire Domesday, Lincoln Record Society vol. 19, pp. ppxxi-xxii. "The division of a property implied a corresponding division of the profits which might come to an owner from the church or churches built upon it.... where two or more lords contributed equally towards the building of a church and the endowment of a priest, all were held entitled to share equally in the ensuing profits. Where a lord built a church at his own cost, it became his church....".

Compare also; F.M. Stenton, Transcripts of Charters relating to Gilbertine Houses, p. xxiii; and F.M. Stenton, Documents Illustrative of the Social and Economic History of the Danelaw, p. lxxiv, "...about the year 1150 the ordinary formulae of enfeoffment were considered appropriate to the grant of a church... no fundamental difference was recognised at this time between a church and the other profit-yielding appurtenances of an estate".

A similar attitude is expressed in a charter granted to Thurgarton priory about 1150 A.D. Robert de Caux gave a mill on the Doverbeck, Notts to be held by the brethern of Thurgarton "until I shall give them a church or something which would be more useful to them." Possession of a church was one condition for

(I) Southwell Minster, Thurgarton Cartulary, f. 54.

Compare also, Facsimiles of Early Charters, Northampton Record society, Vol. iv, p. 63. "Divided lordship over a village always complicated the history of the village church. The lords of the different fees within a village usually claimed rights over its church..... In charter XXII, the circumstances which entitled Thurstan the priest to grant the church of Hemington to St. Neots are nowhere described. The impression left by his charter is that he belonged to a family of local landowners on whose property the church had been built. In any case he certainly regarded his rights in the church as heritable, and his provision that Roger his son should hold the church after his death is an admirable illustration of the practice of hereditary succession in benefices in the twelfth century. That Roger did succeed his father is clear from charters XXIII and XXIV." For hereditary succession in benefices, see below.

For further confirmatory evidence of the view of the church as property to be treated in the same way as other profit-making concerns, see The Register of the Abbey of St. Benet of Holme (Norfolk Record Society, vol. III), pp. 252ff. The documents relating to the church of Ranworth, which are printed also by A. Saltman, in Theobald of Canterbury (University of London, 1956) are of particular interest, as they show that in the view of the Archbishop the main question was the validity of the claims to the land on which the church was built. In other words the holder of the land on which the structure was erected was entitled to the church and its profits.

the thriving of a thegn. From the late Anglo-Saxon period comes the alliterative description, "And if a ceorl throve, so that he had fully five hides of his own land, church and kitchen, bell-house and burhgate, seat and special duty in the king's hall, then was he thenceforth of thegn-right worthy."¹ F.W. Maitland comments that he may be said to "have" the church in no very different sense from that in which he "has" the bell-house and the kitchen.² The church was private property. Built at his own cost, it provided a source of income to the founders and his heirs; and it was only by slow degrees and mainly as a result of episcopal pressure that the patron or owner who appointed the priest was compelled to assign a definite portion of the revenues of the church for his maintenance.³

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- (1) Stubbs', *Select Charters*, 9th editn., p.88.
 - (2) Pollock and Maitland, *A History of English Law*, p.498; *Cambridge Medieval History*, vol.VI, p.531; Ollard and Crosse, *op.cit.*, p.443.
 - (3) F.M. Stenton, *Anglo-Saxon England*, pp.149-150; R.H. Hodgkin, *A History of the Anglo-Saxons*. (Oxford 1939) pp.424ff.
H.H. Bohmer, *Eigenkirchentum in England*, in *Texte und Forschungen zur Englischen Kulturgeschichte*; Festgabe für Felix Liebermann, pp.301ff.

II.

The motives of those who built churches on their land differed widely . Christian devotion no doubt led many to desire to have in their neighbourhood a church and a priest whom they trusted, for the benefit of themselves and their families, or for their tenants if they themselves lived elsewhere. Others were more attracted by the prospect of material gain through tithes, the gifts of the faithful and church dues. As John Selden says in "The Historie of Tithes"¹, published in 1618 but still a work of great importance, "The erecting of Churches became, amongst some to be rather gainful than devout, for the Patron would arbitrarily divide to the Incumbent, and take the rest to his own use. This is manifested in the Second Council of Bracara (Braga), held about D.LXX. where a Canon forbids the consecration of Churches built not 'pro sanctorum patrocinio', but 'sub tributaria' conditione', as the use was of some places; that is to the end that the lay founder might have half or other part of the Oblations." The ground on which they base their claim is their title as owners of the land on which they have ~~raised~~ their church. "Si quis basilicam non pro devotione fidei, sed pro quaestu cupiditatis aedificat

(1) J.Selden, The Historie of Tithes. (1618), p.84.
Also, Cambridge Medieval History, Vol.VI, p.532;
Erskine, An Institute of the Law of Scotland, edited by
J.B.Nicolson, 1871. "Patrons used for some time great
liberties, both with those whom they placed in the church
and with its revenues. They frequently compounded with the

ut, quicquid ibidem de oblatione populi colligitur, medium cum clericis dividat, eo quod basilicam interra sua quaestus causa condiderit (quod in aliquibus locis usque modo dicitur fieri), hoc de caetero observari debet, ut nullus episcopus ^{cum} tam abominali ^{2.} _A voto consentiat, nec basilicam quae non pro sanctorum patrocinio, sed magis sub tributaria conditione est condita, audeat consecrare." ^{1.} It was the owner's sense of responsibility alone which determined whether he would pay heed to the spiritual objects of his church, or whether he would rather use it to increase ^{2.} his revenues. Often church services were neglected, or clerics were appointed who were quite unsuited for their spiritual duties but would prove useful as estate managers or in transacting secular business. Sometimes lords built churches, but did not endow them, and then finally sold them after procuring or usurping on their behalf a number of profitable rights. Many churches became in this way the objects of economic speculation.

incumbent for the half, or some other proportion, of the oblations of Christians who attended divine service there; a practice heavily complained of and forbidden by the third (incorrect; the second) Council of Bracara, anno 570 (incorrect; the date is 572). And in truth patrons considered themselves in those days to have as strong an interest in church-benefices, as superiors had in temporal."

(1) Ex Concilio Bracarense, II, c. 6. Decreti tertia pars. De Consecratione, Dist. I, Canon 10.

(2) Thomas, p. 34; also Tellenbach, op. cit., p. 73.

Carolingian legislation concerned itself with the proprietary church in much detail.¹ While the principle of private ownership was allowed, an attempt was made to limit the consequences which founders drew from it. Throughout the period the Church legislated on the administration of the "dos", the appropriation of the offerings, tithes, the nomination of the clergy, the "commendatio ecclesiae".

Churchmen² of the calibre of Prudentius of Troyes and Hincmar of Laon, Abbo of Fleury and Cardinal Deusdedit³ attacked the whole system of private ownership. Abbo of Fleury's historical, canonistic and dogmatic studies had roused in him deep suspicion of the whole system. "Caveant, inquiens, quicumque vult salvus esse, eam, haud dubie quin ecclesiam, alicujus alterius, nisi solius Dei possessionem credere. Unde Petro Principi Apostolorum dicitur; Tu es Petrus et super hanc Petram aedificabo ecclesiam meam. Meam, inquit, non tuam. Et Christus alibi; Domus mea, domus orationis. Psalmista quoque; Psal. 92, 5. Domum tuam, Domine, decet sanctitudo. Si ergo ecclesia non est Petri, cujus erit? Aut successores Petri audebunt potestatem sibi vindicare, quam non habuit Petrus, princeps Ecclesiae? Certe, charissimi Principes, nec catholice vivimus, nec catholice loquimur, quando illam ecclesiam dico esse meam, ille alteram dicit esse suam. Ac veluti quaedam jumenta, comparati jumentis insipientibus, utras-

(1) An admirable summary of the legislation will be found in G. Tellenbach, *Church, State and Christian Society*, Appendix II.

que aliquando venales proponimus,propositasque ab aliis emere non formidamus." Such an outlook appears to sap the foundations of the proprietary system. Yet Abbo was himself not the man to draw revolutionary practical conclusions from his deep insight.^{4.}

J.P.Whitney,Hildebrandine Essays will also be found useful; and the chapters by J.P. Whitney and Z.N.Brooke in Cambridge Medieval History,Vol.V.,and the relevant sections of P.Thomas, op.cit.

- (2)Prudentius of Troyes and Hincmar of Laon sought to exact from the founder,at the time of consecration,the "traditio ecclesiae".

Hincmar of Reims characteristically attacks only the unauthorised encroachments of the territorial lords, and their greedy exploitation of their churches.The legal system centred round the proprietary church,in the form in which it was established by Carolingian legislation,he defended with remarkable determination,for he was completely dominated by the conception of the proprietary church and by the legal construction built up on this basis. His important work,De ecclesiis et capellis,has been edited by W. Gundlach in Zeitschrift fur Kirchengeschichte,X,pp.92-145.

- (3) Cardinal Deusdedit,Libellus contra invasores,"Restat ostendere quod laicis non liceat in ecclesia dominium habere,nec res earundem in sua jura transferre". Deusdedit maintained that the parish priest should be appointed by the clergy and people of the parish,and that no one should be appointed against their will. Id.id.,iv.2;"Sciendum autem quod sicut clerus et populus episcopum sibi constituendum communiter deligunt et expetunt,ita propter pacis et caritatis bonum debet clero et populo cuiusque ecclesiae et vicinis sacerdotibus concedi,ut presbyteros et inferiores gradus potiores clericos sibi eligant:non tamen in ecclesiam ullo modo introducere presumant,nisi ab episcopo civitatis vel ejus vicariis juxta apostolum primum probentur;et sic ab eodem vel suis vicariis vitae suae diebus in ecclesiis stabilantur;ne si nolentibus et non petentibus ingerantur,ab eisdem vel condemnentur vel odio habeantur."
- (4)It would appear that Abbo was more concerned to protest against the legal implications of the system,and to show the impossibility of introducing it into the body of accepted

Many proprietors conveyed their churches to bishoprics and monastic houses, sometimes gratuitously, in other cases for considerations pecuniary or otherwise. But many of the laity declined to disembarass themselves of their ecclesiastical wealth, and against these the Church took the offensive.¹

The idea of the owned church had not been confined to lesser churches, but came to be applied to bishoprics and abbeys as well. Kings assert a patronage over ancient cathedrals, and the conception of the proprietary church very nearly embraced the papacy itself. "A few more emperors like Henry III", says Stutz,² "and the mother church of Christendom would become the private church of the German ruler."

doctrine. In his collection of canons we find sentences quoted from the Carolingian legislation to which we have referred, and their acceptance of the proprietary system repeated without question. Abbo, Apologeticus, (MPL. I39 col 465) Positive expressions of *Eigenkirchenrecht* appear in Coll. can. c. 19 (ibid. 487) and c. 38 (ibid. col. 495), where Eugenius II's decree of 826 is quoted, "*Monasterium vel oratorium constructum canonice, a dominio constructoris eo invito non auferatur.*"

- (1) For the substance of this paragraph, see G. Mollat, *La Restitution des églises privées au patrimoine ecclésiastique en France du IX^e au XI^e siècle*. (Revue Historique de Droit Français, 1949, p. 399-423), with its very full documentation.
- (2) Barraclough, op. cit., p. 64.

It was this state of things that led to the great conflicts of the eleventh and twelfth centuries. It was over the appointment to higher offices, the investiture of bishops, that the main conflict took place. But the principle, "No investiture with the lay hand," applied over the whole field, and was brought to bear on the patrons or owners of the lesser churches as well.

- (1) See Z.V. Brooke's Raleigh Lecture, Lay Investiture and its Relation to the Conflict of Empire and Papacy.

Also for the history of ecclesiastical reform in this period, there is the monumental work of Augustin Fliche, *Reforme gregorienne*, the contents of which are summarised in more popular form in, *La querelle des investitures* (Paris 1946) and in Vol. VIII of *Histoire de l'Eglise, La réforme gregorienne et la reconquête chrétienne*. (Paris 1950). This may be compared with Scharnagl, *Der Begriff der Investitur in den Quellen und der Literatur des Investiturstreites*, an admirable summary of the whole question of Investiture arranged most clearly. Compare too R.F. Bennett's excellent introduction to G. Tellenbach's, *Church State and Christian Society*; and Geoffrey Barraclough, *Origins of Modern Germany*, pp. 147-153.

- (2) Thomas, op. cit., p. 134, "La lutte fut générale et les benefices inférieurs, les chapelles et les oratoires furent compris dans les reformes du Saint-Siege."

J.P. Whitney, *Hildebrandine Essays*, p. 29, "The celebrated Roman Synod of 1059 ordered that no clerk or presbyter should receive a church through laymen either for a price or freely. This canon applied not only to bishoprics, but to lesser churches as well. And the same canon was renewed under Alexander II in 1063."

Canon six of the synod of 1059 did not explicitly condemn the holding of churches by laymen, although this principle seems to be implied. "Ut per laicos nullo modo quilibet clericus, aut presbyter obtinent ecclesiam nec gratis nec pretio."

In the decrees of the Lateran synod of November 1078 the papal policy in regard to lay proprietorship of churches was clarified.¹ It is noteworthy that this legislation applied to all churches, both upper and lower. It is confirmed in this respect by the March synod of 1080 which while stressing bishoprics and abbaties, stated that the decrees applied to the lower churches as well. "We decree similarly concerning the lower ecclesiastical dignities."²

In contrast to the Roman councils, the French synods of the eleventh century were much more active, from 1031 onwards, in their efforts to improve the condition of the lower churches. The legislation of the French councils was first placed in its proper light by Georg. Schreiber, Gregory VII, Cluny, Cîteaux, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, lxx (1947), Kan. Abt. xxxvii, pp. 59-67. See also E. Amann and F. Dumas, L'Eglise au pouvoir des laïques, in Fliche et Martin, Histoire de L'Eglise, Vol. VII.

- (1) Concilium Romanum, IV, c. 2. (1078). "Decernimus ut nullus clericorum investituram episcopatus vel abbatiae vel ecclesiae de manu imperatoris vel regis vel alicuius laicae personae, viri vel feminae, suscipiat. Quod si praesumpserit, recognoscat, investituram illam apostolica auctoritate irritam esse et se usque ad consignam satisfactionem excommunicationi subiacere." Cf. Decretum, Cause 16, question 7, c. 13. (Friedberg, Corpus Juris Canonici, I, 804.); and Mansi, xx, 510.
- (2) Concilium Romanum, VII, c. 1. "Ut si quis deinceps episcopatum vel abbatium de manu alicuius laicae personae susceperit, nullatenus inter episcopos vel abbates habeatur, nec ulla ei ut episcopo seu abbati audientia concedatur. Insuper etiam ei gratiam S. Petri ei introitum ecclesiae interdicimus. Similiter etiam de inferioribus ecclesiasticis dignitatibus constituimus." Cf. also Concil. Roman. (1080), VII, c. 2; Concil. Pictav. (1100), c. 3; Decretum 16, 7, 16 & 17.

After the canonists had succeeded in detaching the "jus patronatus" from its real basis in "dominium", Pope Alexander III represented it as a "jus spirituali annexum",

- (I) The term "jus patronatus" which appeared in the eleventh century or whose use became general at that period, had diverse senses; "jus praesentandi", "jus collationis", "jus electionis". This right is at the beginning of the 11th century a real right. In the following century, the canonists succeed in taking from it this character. It has become a personal right which sprang not from "dominium" but from the foundation of a church.

When the canonist Rufinus finds the word "dominium" in a text of the Decretum of Gratian (Decretum, Cause 16, quest. 7, c. 33; a decision of the Roman Synod of 826), he strives to show that the expression is inexact, and that it ought to be rendered by "jus patronatus". So Schulte, Summa Rufini, p. 331, "A dominio, id est a jure patronatus; improprie enim hic dominium dicitur".

The same methods of interpretation are to be found in the other canonists of the period. Cf. Hostiensis, Summa aurea, 918, "Verum si quis utatur hac simplicitate verborum, dono tibi ecclesiam et concedo, donare intelligitur jus patronatus nam plerumque hoc nomen ecclesiae pro jure patronatus supponit."

But the old notion of the patron's ownership of the church died hard. In England Bracton complained that the layman would talk of giving a church when he meant that he was giving a right of advowson. (Bracton f. 53). Even in 1334 Herle said, "Not long ago it was not known what an advowson was, but when the intention was to give an advowson to another, it would be expressed in the charter that the alienor gave the church." (See Law Quarterly Review, V, 35).

According to Canon Law, the use of the donative form had the effect of transferring the advowson itself to the donee, since this was all that a patron was in a position to give. (Decretals, 3, 24, 7; G. de Trano, Summa, t. de jure patronatus, 1491 edn., fo. 57). This view is admitted by Bracton in a passage following the one cited above, "Habet tamen hujus modi donatio ex consuetudine et ab usu aliam interpretationem... et propter simplicitatem laicorum interpretatur, quod laicus per haec verba dat quicquid juris habet.... scilicet jus advocationis."

an outcome of the gratitude of the church to a pious donar.¹
 Thus was laid the basis of the classical law of the church
 regarding patronage.² The development has been succinctly
 described by Gabriel Le Bras, (Professeur à la Sorbonne) and
 joint author with Paul Fournier of "Histoire des Collections
 Canoniques en Occident", "In the Dark Ages the disposal both of
 ecclesiastical property and offices was as far as possible
 retained by the owners, overlords and sovereigns. The Gregorian

- (2) Decretales 3,38,16. "Quum inconueniens sit et penitus inhonestum vendi jus patronatus, quod est spirituali annexum, contractum illum... irritum esse decernas." Restit. ex App. Concil. Lat., XLVII, I. Quinque Compilationes Antiquae, Comp. I; 3, XXXIV, 20. (Ed. Friedberg, p. 42).

Decretales d'Alexandre III, t. 53, c. 14. Bohmer, Corpus Juris Canonici, app., II, p. 302: "Unde quoniam jus patronatus annexum sit spirituali, nemini licitum est...."

- (1) Cf. Goffredi de Trano, Summa, p. 151. "Item nota quod jus patronatus de gratia dicitur obtineri.... Et hoc ideo, quia cum jus patronatus sit spirituale vel spirituali annexum, ... laici de rigore juris non debeant ecclesiastica et maxime spiritualia tractare negotia..."

R. Grosseteste, the scholarly Bishop of Lincoln, in a lengthy discussion of jurisdiction in matters of patronage, says; "licet contra justitiam habeantur laici ecclesiarum patroni." Ep. 72, p. 228.

- (2) Pope Alexander III is generally regarded as the real architect of the classical law of the church regarding patronage. But for a contrary view, see Stutz, Gratian und die Eigenkirche, in ZSSR, Kan. Abt., t. I (1911), pp. 1-33. This article is summarised by G. Mollat, Les Eglises privées et le patrimoine ecclésiastique (Revue Historique de Droit Français, 1949, pp. 414-415). Mollat, following Stutz, concludes, "Ainsi, en déterminant les conséquences de la propriété laïque, Gratien créa réellement le régime du patronat tel qu'il subsiste dans le droit classique. Alexandre III n'aura pour tout mérite que de le rendre obligatoire et d'accorder des avantages restreints aux propriétaires des édifices sacrés mis en demeure d'éviction."

reforms definitely forbade the lay investiture of spiritual offices. As regards the minor benefices, the church substituted for the ownership of the lord, the right of patronage, which included as its principal attribute the right of presentation. This was declared by Alexander III to be "jus spirituali annexum", thus reserving to the ecclesiastical jurisdiction of the diocese cognizance of all disputed cases. Thus the independence of the spiritual authority, of the hierarchy, which the intimate connexion between the benefice and the priestly function had seriously compromised, appeared to be safeguarded...¹

- (I) Gabriel Le Bras, Canon Law, in *Legacy of the Middle Ages*, p.338.

For the influence of Roman Law on the formation of the "jus patronatus", see Le Bras' important article, *Le Droit Romain et La Domination Pontificale*, in *Revue Historique de Droit Français*, (1949), pp.388-389.

"La libération de l'Eglise exigeait d'abord que la propriété privée (dominium) des bâtiments cultuels fut éliminée. Aussi longtemps que les seigneurs seront maîtres des paroisses, le recrutement et l'autorité des recteurs échapperont à l'évêque du lieu, la base de la hiérarchie sera ruinée. Comment éliminer les textes gênants et surtout le canon du synode tenu à Rome en 826?

"Ce fut le droit romain (ou plutôt son interprétation) qui fournit l'artifice, 'Dominium', dans la langue irnerienne, et plus encore dans la langue de Placentin, désigne non seulement la propriété, mais encore tous les droits sanctionnés par une 'actio in rem'. Des lors, rien n'empêche d'interpréter le 'dominium' reconnu aux fondateurs par le droit canon comme la simple réserve d'un droit perpétuel sur l'affectation, tout semblable à celui de l'usufruitier? (La glose ordinaire de c.33, Cause XVI, qu.7, Monasterium, au mot 'dominium', appuie cette interprétation sur un fragment de Paul, au Digeste, VII, 8, 32)

This new conception of patronage, which was the outcome of a legal fiction implied that the interests and welfare of the church were the primary considerations,¹ that cases of controversy as to patronage would come within the church's jurisdiction,² and perhaps most important of all, that the exercise of the right would depend on the goodwill and recognition of the church which, as Stutz remarks, could show itself less grateful as time went on.

"Le bâtiment destine au culte restera une eglise paroissiale aussi longtemps que l'heritier des batisseurs n'aura point permis autre usage; l'ancien maitre a perdu son pouvoir theoriquement absolu: il est devenu un patron, non certes par la seule force du droit romain, mais avec la complicité des romanistes."

(1) Esmein, Droit Français (11th editn), pp177-178.

(2) Decretals, 2, I, 3.

"Causa vero juris patronatus ita conjuncta est et connexa spiritualibus, quod non nisi ecclesiastico judicio valeat definiri, et apud ecclesiasticum judicem solum modo terminari."

(3) Decretals, 3, 38, 3, and the ~~manuscript~~ glosses thereupon. Also numerous charters of the 12th and 13th centuries state that the right of presenting a candidate for a vacant benefice is a concession on the part of the church.

Cf. Guerard, Cartulaire de Notre-Dame de Paris, I, pp. 121-2. (1201, A.D.). "Ego Thomas de Brueriis.....notum facio quod,.. Odo parisiensis episcopus, mihi benigne concesserit ut quandocumque, dum vixero, capellanum Sacti Thome de Pleisseiz cedere vel decedere contingerit, capellanum quem voluero ad eandem capellam valeam presentare, et idem episcopus presentatum, si inveniatur idoneus, recipere teneatur.....Post decessum meum, heredes mei nullum jus habeant, nec aliquid valeant reclamare in presentatione predicta, sed solus parisiensis episcopus, pro beneplacito suo, possit in memorata capella eligere quem voluerit et instituere capellanum". Yet many founders of churches reserve to themselves and their heirs the right of presentation.

Canonists were not unanimous in asserting that patronage was only a tolerated privilege. See e.g. Friedberg, Corpus, I, 614: Io, q. I. c. 6: II, 3, 38, 23. Hostiensis, Commentar., pp. 146v-7v.

The church's victory was however a limited one.¹ In England, France and Germany she failed to secure jurisdiction in relation to patronage rights.² And as Stutz remarks, appropriation was a perpetuation of the essential features of eigenkirchen. "So entstand als sweite Tochter des Eigenkirchenrechtes und als jungere Schwester des Patronates die Inkorporation."³

(1) L'Eglise et L'Etat au Moyen Age. XI. M. Pacaut, Alexandre III (1159-81). Etude sur la conception du pouvoir pontifical dans sa pensée et dans son oeuvre. (Paris, 1956), especially, pp. 291ff.

"Sous le pontificat d'Alexandre III, l'application de ces principes n'est pas toujours aisée; pendant longtemps encore, des abus subsisteront et de graves différends éclateront. Il faudra à ses successeurs la ténacité dont il fait preuve lui-même pour obtenir des résultats réels." M. Pacaut, Alexandre III, p. 292

Also G. Mollat, La restitution des Eglises, p. 423. "Les avantages que leur assura le nouveau régime du patronage promulgué par Alexandre III ne les contenteront pas. La notion d'église privée et ses conséquences subsisteront sous une autre forme.

"...des patrons continueront, comme par le passé, à aliéner les biens paroissiaux ou à percevoir des revenus ecclésiastiques, tous abus dont gémissent encore le concile d'Avignon en 1326 et les statuts de Soissons en 1403.

"Quant aux églises tombées en possession des monastères, leur sort n'eut souvent rien d'enviable. Malgré les remontrances épiscopales et les prescriptions conciliaires, elles furent tenues comme des biens exploitables à merci, s'il faut en croire le célèbre Guillaume Durant, évêque de Mende, et les ambassadeurs français présents au concile de Rome (1413).

(2) See below, p. 76.

(3) U. Stutz, Gratian und die Eigenkirchen, p. 12.

III

CHURCH PATRONAGE IN SCOTLAND IN THE 12th and 13th CENTURIES

It is against this larger background that the changes which took place in the Scottish Church during the twelfth and thirteenth centuries must be viewed, for these changes were not isolated from the main movements of European history. The general issue of episcopal investiture was raised once only; but in the parish the owned church, so fiercely condemned by ecclesiastical reformers, took root.

I

Early Grants of Churches

At the beginning of our period, patrons claimed large powers in the churches of their foundation, and the language of the charters is crudely proprietary.¹ The grant of a church generally conveyed more than the right of patronage, and included the whole revenue derived from glebe, tithes and offerings.²

- (1) Morgan, Transactions of the Royal Historical Society, 1947, p.149; Ritchie, The Normans in Scotland (Edinburgh, 1954), p.201.
 (2) Barlow, Durham Jurisdictional Peculiars, p.126. "As would be expected at the time, the whole ownership of the church was transferred."

H.M. Colvin, White Canons, p.273. "These early grants of churches are made in general terms which were intended to convey more than a mere right of advowson. The revenue derived from glebe, tithes and offerings was included, and subject to

This would appear to be so in the case of the Ednam charter(II07-III7 A.D.) which because of its special interest I have consulted in the original at Durham. "Domino suo carissimo Davidi Comiti,Thor omnino suus,salutem. Sciatis, domine mi,quod Eadgarus rex frater vester dedit mihi Ednamham desertam quam ego suo auxilio et mea pecunia inhabitavi et ecclesiam a fundamentis fabricavi quam frater vester rex in honorem Sancti Cuthberti fecit dedicari et una carrucata terrae eam dotavit. Hanc eandem ecclesiam pro anima ejusdem domini mei regis Eadgari et patris et matris vestri et pro salute vestra et regis Alexandri et Mathildis reginae,Sanct praedicto et monachis ejus dedi. Unde vos precor sicut dominum meum carissimum ut pro animabus parentum vestrorum et pro salute vivorum hanc donationem Sancto Cuthberto et monachis sibi in perpetuum servituris concedatis." (Durham,Dean and Chapter

"to the obligation to provide for the support of a priest,the canons were as much the proprietors of their churches as their previous lay owners."

Cosmo Innes,Scottish Legal Antiquities,p.204;J.Dowden, Chartulary of Lindores,xliii.But in reading what Bp Dowden has to say,one should bear in mind that appropriation,in the sense of a formal process carried out by episcopal authority and with strict regard to canon law,was still a novelty in the twelfth century.Often it meant no more than the automatic transfer of proprietary rights from a secular lord to a monastic corporation. Cf.Knowles,Monastic Order,pp567-8.

In his introduction to Transcripts of Charters relating to Gilbertine Houses,Sir Frank Stenton calls attention to a charter relating to the Gilbertine House of Sixle,in which Agnes daughter of Wm.of Percy expressly distinguishes her gift of the right of

Archives, Document no. 722¹).
²

With this should be compared the following charter, a copy of which appears in a 13th century Durham Cartulary, CARTUARIUM VETUS, folio 114 verso. The original does not exist. A.C. Lawrie's inaccuracy in stating that "the original is in the Treasury at Durham" sent the Durham archivist and myself upon a fruitless search. It would appear that even so careful a scholar as Lawrie took the wording of this charter from a secondary source. If he was indebted to Raine's, North Durham,

patronage in the church of St. Helen of Ludforth from her gift of the church itself with its appurtenances. "Notum sit vobis omnibus quod ego Agnes, vidua post obitum Jocelini sponsi mei, concessi et dedi et hac carta mea confirmavi in puram, perpetuam elemosinam jus patronatus ecclesie Sancte Elene de Ludforth et ipsam ecclesiam cum omnibus pertinenciis suis.." (Sixle Charter II)

(1) The original is in good condition, and bears a seal, "Effigies hominis sedentis, nudi caput, tenentis capulum gladii in dextra et laminam ejusdem in sinistra. Hae autem est sigilli inscriptio THOR ME MITTIT AMICO."

The charter is printed in National MSS Scotland I, no. XIV: J. Raine, History and Antiquities of North Durham, Appendix, no. CLXII: A.C. Lawrie, Early Scottish Charters, no. XXXIII.

(2) A.C. Lawrie, Early Scottish Charters, p. 19 and again on p. 259.

where the charter is printed in Appendix, no. CLXI, then he missed the note at the foot of page 38 of the Appendix which reads "Carta orig. deest. Vide Andersoni Dipl. Tab. LXIX, et Cartuar' Eccles. Dunelm'." I am indebted to the Reader in Palaeography and Diplomatic at Durham for the reference to the Cartuarium Vetus.

Circa 1105. Charter by Thor Longus to the Monks of Durham. "Omnibus sanctae matris ecclesiae filiis, Thor longus in Domino salutem. Sciatis quod Aedgarus, dominus meus, rex Scottorum, dedit mihi Aednaham desertam quam ego suo auxilio et mea propria pecunia inhabitavi, et ecclesiam in honorem Sancti Cuthberti fabricavi, quam ecclesiam cum una carrucata terrae Deo et Sancto Cuthberto et monachis ejus in perpetuum possidendam dedi. Hanc igitur donationem feci pro anima domini mei, regis Aedgari, et pro animabus patris et matris illius et pro salute fatrum et sororum ipsius et pro redemptione Leswini, fratris mei dilectissimi, et pro meimet ipsi tam corporis quam animae salute. Et si quis hanc meam donationem Sancto praedicto et monachis sibi servientibus aliqua vi vel ingenio auferre praesumpserit, auferat ab eo Deus Omnipotens vitam regni coelestis et cum diabolo et angelis ejus poenas sustineat aeternas: Amen!"

(I) The charter is printed by J. Raine, N. Durham, App., p. 38, no. CLXI; Anderson's Diplomata, LXIX; A. C. Lawrie, Early Scottish Charters, no. XXIV.

It is generally considered to be the earliest reference to the endowment of a parish church in Scotland. Not

The words of the charter show that the donor's intention was to transfer the whole emoluments of the benefice, whatever they were, to the monks of Durham; and this, as we have seen, was generally the object of such grants in other countries of Europe at this time. No canonical confirmation of this grant appears, but such confirmations were rare at this period. Thus Selden¹ says that in those older appropriations, "it appears

only / does it show a landowner building a church and endowing it with land; it also shows that the church so far from being an independent parish church served by its parson, was at once handed over to the monks of a distant monastery to whom, no doubt, it henceforth became valuable mainly for what it could be made to produce. The evils of such a system were not at first perceived, and no doubt there were counterbalancing advantages. Cf. C. Innes, in National MSS of Scotland, Part I, notes on no. 14; also A Sourcebook of Scottish History, I, p. 47.

For a more favourable view of appropriations, see for example F. Barlow, The Feudal Kingdom of England, p. 128. "The custom made the monasteries rich and kept the parish priests poor. But so long as the impropiators administered the tithe faithfully, using it for charitable, educational or building purposes, the arrangement was just and proper. No one minister had any special right to tithe. It was a general church fund which could better perhaps be handled by the monasteries than by the village priests."

Also C. R. Cheney, From Becket to Langton (Manchester University Press, 1956). "The canon law, like the common law of England, regarded the church as so much material property; it could be divided, and all or any of it might be devoted to purposes outside the parish, so long as someone was found to take on the cure of souls. The dispersal should not be condemned out of hand. It could be justified by the great wealth of some benefices, in excess of local needs, and on the other hand, by the lack of endowment for archdeacons, bishop's officials, and other useful people. But abuse was only too easy (I) Selden, Tithes, pp. 373, 376. Cf. also Blackstone, Commentaries on the Laws of England, II (11th editn), pp. 21f.

that the church and the tithes and what else was joined with it as part of the assigned revenue by the practice of the time passed in point of interest from the patron by his gift.. not otherwise than freehold conveyed by his deed and livery. Neither was confirmation or assent of the Ordinary as it seems necessary as of later time....Churches and tithes were most commonly given by lay patrons, without the bishop's assent or institution, and that as well by filling them with incumbents, as appropriating them to Monasteries, Chapters or otherwise."¹

Also for Scotland; Erskine, An Institute of the Law of Scotland, (new editn. by J.B. Nicolson, Edin. 1871), p. 540, where Erskine says that patrons who considered themselves upon the emergence of every vacancy as the absolute proprietors of the benefice assumed frequently a power of annexing the whole emoluments of it to a cathedral or monastery, both that part which was given by themselves and also the tithes. "By this annexation the patron conveyed from himself to the donees not only the right of presenting an incumbent but all the fruits of the benefice; so that the donees became in effect the perpetual beneficiaries of the church annexed, and in consequence the titular of all the tithes belonging to it."

(I) Selden, op. cit., p. 376.

It is clear from Appendix Concilii Lateranensis,
 pars 28,c.II which contains a decretal letter of Pope
 Alexander III to all the bishops of the Province of Canterbury,
 that donation by the patron without presentation was part of
 the secular law,although the judgement of the bishops and the
 Pope describe it as "prava". This is the substance of the
 letter. "Didicimus in partibus vestris consuetudinem pravam
 admodum et enormem...multis retro temporibus invaluisse quod...
 clerici ecclesias et ecclesiastica beneficia sine assensu
 diocesani episcopi vel officialium suorum qui hoc de jure
 facere possunt,recipiunt." To extirpate this custom,the Arch-
 bishop of Canterbury was ordered to pronounce sentence against
 the offenders,and each bishop to read the sentence in his
 diocese four times a year.^{2.}

(1)Mansi,Conc. ampliss. coll.,XXII,p.378.

For Appendix Concil. Lateran.,see Schneider,Die
 Lehre von den Kirchenrechtsquellen,p.I27;also Hefele-Leclercq
 Histoire des Conciles,V(2),p.IIIII. "Barthelemy Laurens,sur-
 nomme Poin,a edite d'apres un manuscrit,un grand Appendix
 aux actes du concile de Lateran;il comprend cinquante livres
 contenant environ six cents decretales des papes,extraites
 soit des lettres d'Alexandre III,soit des edits des papes,se-
 successeurs. Comme ce manuscrit donnait ces decretals
 comme une pars secunda,aussitot apres les canons du present
 concile" (i.e. the Lateran Council of 1179) "elles ont
 trouve place dans les collections des conciles,sans
 cependant y avoir droit."

(2)M.Cheney,The Compromise of Avranches of 1172,and the Spread
 of Canon Law in England,in English Historical Review,
 (1941),p.I95.

The Scottish bishops of the second half of the twelfth century were also closely in touch with the developments of ecclesiastical law in this critical period, as will be seen for example in the documents to be cited later from the Register of Glasgow and other sources¹. At the beginning of the century there was little that patrons did not grant to churches of their foundation, and the bishop's right of confirmation was to say the least obscure. Gradually the church developed its theory, and superimposed it upon lay practice².

Jocelin, Bishop of Glasgow, was one of the most active of the reforming bishops. Others were his successor at Glasgow, William Malvoisin, afterwards Bishop of St. Andrews, and two other Bishops of St. Andrews, Richard (1165-78) and Roger Beaumont (1189/98-1202). Whilst there is no evidence of the Scottish bishops actually resisting the transfer of a church, by carefully confirming every grant, they established the principle that their consent was necessary for the valid transfer of the spiritualities, and therefore for the appointment of parsons who should be responsible to them for the spiritualities. Legal language was conservative, and the crudely proprietary language of lay charters which the bishops delib-

(1) V. *infra* pp. 33 ff

(2) Morgan, *op. cit.*, p. 139.

erately echoed in their own persists so long that it is difficult to know when the grant of a church by a layman came to mean only the advowson and temporal lands.¹ By the middle of the thirteenth century, even the language of charters was more acceptable to canon law;² and the canonical formula, "sacerdotes episcopis de spiritualibus, patronis vero de temporalibus debeant respondere"³ seems to have become established.

- (I) V. supra pp. 18ff, and the passages there cited from Bracton and the Decretals.

Dr. Kathleen Major, Principal of St. Hilda's College, Oxford, in a letter to myself which she very kindly sent in answer to an enquiry, writes.... "The wording of English grants will talk about "ecclesia" in the twelfth century, and from the later history of the parish it will be found that sometimes the monastery has never done anything more than present the clerk, while in others it has drawn the revenues. In the thirteenth century I think it is more usual to find a grant of advocatio."

Cf. also, Harrold Priory. A 12th Century Dispute, (Publications of the Bedfordshire Historical Record Society) Vol. XXXII, pp. 1-26. In his learned introduction to this volume, Professor C.R. Cheney writes,

"The record shows how the bishop interpreted the grant of the church to the nuns. It was not a grant specifically "in proprios usus", and the judgement in favour of Harrold had not meant that the nuns stepped into the position of rector.

"But the bishop by requiring the rector to pay the nuns a pension allowed them more than the mere advantage of the advowson. Twelve years later, in 1227.. the further step of appropriation had been taken. The bishop instituted a vicar on the presentation of the prioress and convent, and made an assignment or ordination of revenues for his support"

There is an important decretal letter on this question in Selected Letters of Pope Innocent III, edited by C.R. Cheney and W.H. Semple (London 1953), p. 75.

- (2) In Cartul. de Levenax, pp. 19, 30-31, 35-36, we have grants of lands with patronage of churches only.
- (3) In England the formula became usual in the later twelfth cent. Cf. a privilege of Pope Alex. III, in Barlow, op. cit., p. 10.

Additional note on, Decretals III, 24, 7.

Pope Innocent III's Ruling

Among the questions which the Bishop of Ely addressed to Pope Innocent III in 1204 was one concerning the use by a bishop of the words, "concedimus vobis illam ecclesiam". If a bishop in making over a church to regulars with the patron's consent, uses this plain form of words, "We make over to you this church", should it be taken that the church is thereby ceded to them for their uses, or only the right of patronage? Innocent III replied as follows:

"Nos autem tue inquisitioni duximus taliter respondendum quod, si episcopus ecclesiam illis conferat de consensu patroni, profecto patronus quod suum est conferre videtur, jus videlicet patronatus, et episcopus confert illud quod ipse obtinet temporaliter in eadem ut, si fructuum ejusdem ecclesie aliquam percipiat portionem, in eorum usus illa portio convertatur. Quod si ex ipsius proventibus nullam debeat episcopus portionem habere, omnes proventus preter cathedraticum in eorum usus credimus convertendos. Sed, ut episcopi donatio sit legitima, consensus est sui capituli requirendus."

(In reference to capitular consent, Bp. Dowden questioned "whether technically it was absolutely necessary for a bishop to obtain assent of his cathedral chapter to such transfer of parochial churches." (Chartulary of Lindores, p.lix) Innocent III's reply leaves no room for doubt. So far as the bishop's own churches were concerned, the question had already been settled by Alexander III. (J.L. I3, I64 : Decretals III, IO, 3)

CHURCH PATRONAGE IN SCOTLAND IN THE 12th and 13th CENTURIES

II

Limitation of the rights of patrons

In this chapter I propose to examine in some detail evidence relating to the limitation of the rights of patrons which we find in certain twelfth and early thirteenth century sources.

(a) Evidence from Registrum Episcopatus Glasguensis.

Registrum Episcop. Glasg., no. 27.

1.

In this letter, Pope Alexander III orders the abbots, priors and others having the patronage of churches in the diocese of Glasgow to present to the bishop persons fit for the cure of souls, and to moderate the charges they demand of the churches according to the prudent judgement of the bishop.

(I) Haddan and Stubbs, *Councils and Ecclesiastical Documents* Vol. II, part I, p. 38. Haddan and Stubbs think the letter may be as late as 1170 A.D., though A.C. Lawrie, *Annals* pp. III-III2, places it earlier, in 1165.

Cosmo Innes, editing *Reg. Glasg.*, simply gives the dates of the pontificate of Alexander III (1159-81), *op. cit.*, p. cvii.

"Quod presentari debeant curati Episcopo ad ecclesias vacantes!" The text of the letter is given in Haddan and Stubbs', Councils etc. and in A.C.Lawrie's Annals, as well as in the Register of Glasgow which has been edited by Cosmo Innes.

"Alexander Episcopus servus servorum Dei, dilectis filiis Abbatibus, Prioribus, et aliis in Glasguensi Episcopatu presentationes ecclesiarum habentibus, salutem et Apostolicam benedictionem. In eo sumus loco et officio, divina donante gratia, constitui, ut pro ecclesiarum statu satagere debeamus, et quae de avaritiae radice procedunt, ab ecclesiis penitus extirpare.

"Inde est quod universitatem vestram monemus, mandamus, atque praecipimus, quatinus in ecclesiis, quas in praescripto vestro, episcopatu habetis, venerabili fratri nostro episcopo ut ab eo curam suscipiant animarum, si nondum presentastis personas idoneas, presentare curetis: et census in eisdem ecclesiis institutos secundum eiusdem Episcopi providentiam ad tantam saltem moderacionem reducere studeatis, quod servientes ibidem necessaria possint decenter secundum ecclesiae facultatem percipere, et episcopalia honora supportare, et hospitalitatis officia exercere. Alioquin non erit nobis molestum sed gratum,

(I) Haddan and Stubbs, op.cit., p.38.; and Lawrie, op.cit, p.III.

si ad quae precipimus Episcopus vos pontificali auctoritate duxerit compellendos. Dat.Lat.VI Kal.Maii."

(For early examples of patrons presenting candidates to the diocesan for institution, see the following chapter. It appears from the St. Andrews' Register that by 1178-79, it had become normal, at least in Lothian, and probably in the diocese of St. Andrews generally for a layman to ~~present~~¹ an incumbent to the bishop for institution.)

(1) To whom does "aliis" (par.I, line 2) refer in this passage, "et aliis in Glasguensi Episcopatu presentationes ecclesiarum habentibus.."? To "other" ecclesiastical patrons, that is to other churchmen having patronage of benefices in the diocese of Glasgow, or to laymen having such patronage? If the reference is to lay patrons, then the pope realises that laymen, under the name of patronage, were continuing to draw revenues from the churches to which they had the right of presentation.

(2) For "census" (paragraph 2, line 5), see Appendix Concil. Lateran. (ACL), Mansi, Concil., xxii, 248; ACL xlvii, where about the same time, the Bishop of Salisbury gets a letter from Pope Alexander III to monks and canons in his diocese

(1) Cf. the following chapter for Reg. Prior. Sancti Andree, pp. 333-334 and the commentary thereon.

rebuking them for installing clerks on their own authority and forbidding them to increase the pensions (census) which they draw from their rectors, without the bishop's leave.¹ With this should be compared the decretal letter to the Bishop of Worcester (II64-II79), in which Alexander III forbids the charging of new pensions on churches without the bishop's approval.² The Lateran Council of II79, chapter 7 forbade the imposition or augmentation of charges on churches, but does not mention the bishop's power in the matter;³ the reference is to churchmen holding patronage. The bishop's power in the matter of granting pensions is also discussed in a letter of Pope Innocent III to the Bishop of Ely.⁴

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- (I) ACL xlvii, 6. (Mansi, xxii, 414). (Alexander III) "canonicis fratribus et monachis in episcopatu Saren. ecclesias habentibus... Ex transmissa nobis insinuatione venerabilis fratris nostri Jocel. Saren. episcopi accepimus quod cum in episcopatu de Saren. habeatis ecclesias, de quibus censum annuatim percipitis; earum rectoribus decentibus, auctoritate propria easdem ecclesias occupatis, aut etiam clericos in eis ponitis. Et infra: Infra duos menses postquam ecclesiae praedictae vacaverint, ad eas memorato episcopo, omni occasione et appellatione remota, idoneas personas praesentetis, ut per ipsum curam animarum recipiant. Et infra: Illud quoque nihilo minus prohibemus, ne censum vestrum in praedictis ecclesiis sine praedicti episcopi assensu augeatis sed in eis constituto antiquo censu sitis contenti."
- (2) Decretals 3, 39, 8.
- (3) Third Lateran Council, (II79), c. 7.
Decretals 3, 39, 7; and 5, 3, 9.
- (4) Selected Letters of Pope Innocent III, edited C.R. Cheney, p. 75.

For Scottish references, compare Robertson's "Statuta" No 13, Quod novi census non imponantur ecclesiae, "Statuimus eciam quod novi census ecclesiis aut vicariis non imponantur nec antiqui census augeantur....."^{1.}

No.65 in Robertson's "Statuta" is also important. After prohibiting,^{2.} "as was ordained in the General Council", the imposition of new assessments on churches and the increase of old ones, the Statute continues, "and let presentees understand that they must in future swear that there is no promise or compact between them and the patron presenting them in order to secure the benefice, and especially as regards an increase of allowance to the patrons." "Sicut in Generali Concilio est statutum firmiter prohibemus ne novi census imponantur ecclesiis. nec veteres augeantur. quodcunque contra hoc actum est sicut in eodem Concilio cautum est irritum habeantur. Noverint etiam

(1) Concilia Scotiae; Statuta Ecclesiae Scoticae, edited by J. Robertson (Bannatyne Club, 1866).

The reference here is to p. 13 of the second volume.

(2) The reference here is to the Third Lateran Council (1179) c.7. Compare the Latin text of No 65 in Robertson's Statuta (Vol.II, p.36) with that of the Lateran Council.

presentati quod de cetero jurabunt quod nec promissio nec pactio aliqua intersit inter ipsos et presentatores propter beneficium habendum et maxime de augenda pensione."^{1.}

This latter part of the statute would appear to be based on an English canon which forbids presentees to make simoniacal compacts with the patrons or presenters or to promise them any higher pension from church funds than had been hitherto usual in such cases. "As it has been forbidden in a council, so we forbid any pension, great or small, to be given to anyone fraudulently out of the profits of a church. And because fraud and simony used to be committed in relation to such pensions, therefore we to obviate such evils, do sometimes take an oath both of the presenter and the presented, that no unlawful promise or bargain hath been made."

(1) Statuta, op.cit., II, p.36.

(2) Provincial Constitutions of St. Edmund, Archbishop of Canterbury, A.D. 1236, c.24. See Wilkins, Concilia I, 635ff. also Johnson, English Canons with notes there given.

"Praesentantis et praesentati praecipimus interdum juramentum quod nec promissio nec pactio illicita inter- venerit et quod ecclesia non debet amplius obligari, quam prius fuit obligata. Similiter inhibemus ne quis, qui prius ecclesiae fuit persona, in eadem ecclesia fiat vicarius."

Also Archbishop Langton's Constitutions, c.12; and Lyndwood, Provinciale, p.107. "We strictly forbid any man to resign his church and then accept the vicarage of the

Bishop Dowden is surely justified in saying that there is ample evidence to show that ~~the~~ monasteries often bargained with their presentees for an annual payment to be made to them.¹

same church from his own substitute; because in this case some unlawful bargain may well be suspected; let the one of them who presumes to do this be deprived of his parsonage, the other of his vicarage."

For the transference of the tenure of a quondam parson into that of a perpetual vicar, cf. C.R. Cheney, *From Becket to Langton*, pp. 133 and 190-1, with the documents there cited; Brit. Mus., MS Egerton 3033, fo. 51r.; Public Record Office, Anc. deed B. 2967. Both texts are in a cartulary of Canons' Ashby Priory (O.S.A., Northants).

The decretal letter of Alexander III to the Bp. of Worcester (referred to above; X, 3, 39, 8) is printed in full but without the dating clause in *Epistolae Gilberti Foliot*, ed. J.A. Giles, ii 139. This gives the text in its original form as a letter, and is therefore a more convenient basis for study than X, where the various clauses are entered separately under different heads according to subject matter. See E.H.R. (1941), p. 186.

(I) Dowden, *Medieval Church in Scotland*, p. 116.

Reg.Epis.Glasg.,no.58.

This is a bull of Lucius III (A.D.1182-85), one of
 a series of papal letters^{2.} addressed to Bishop Jocelin answer-
 ing his questions on canon law. Roger, Bishop of Worcester,
 received a similar series of letters^{3.} in answer to his requests
 for information, the most important of these being the bull,
 Meminimus (A.D.1167-69).^{4.} On the much disputed question, Why such
 letters as these were sought for and written, see the valuable
 paper by M.Cheney in the English Historical Review.^{5.}

- (1) Haddan and Stubbs, op.cit., Vol.II, part I, p.47.
 (2) Cf. also Reg.Epis.Glasg., nos 59-61, 63-65 and 67-68.
 (3) Referred to in the previous section. X3,39,8 is part of the
 bull, Meminimus which is printed in full in Ep.Gil.Fol., op.
 cit., ii, 139.
 (4) According to a Paris MS which alone has preserved the dating
 clause; Bibliothèque nationale, MS.lat.15601. See Kuttner,
 Repertorium, p.286.
 (5) E.H.R., 56 (1941), pp.185ff. The bull Meminimus deals with
 a variety of subjects, but the problems raised have one
 common feature. They are questions which, though not new in
 Roger's day, could not be answered by reference to the older
 legal treatises on which Gratian had based his Decretum.
 Questions, for instance, concerning procedure in cases of
 appeal (X 2,28,9; ACL vii,14; X 2,28,11) : questions concerning
 the stipends of vicars (X 3,5,12) : and the various ways
 avoiding the increasingly strict episcopal control of
 institutions (X 3,39,8). The fact that rulings should be
 given on these and similar questions does not necessarily
 prove that Roger of Worcester and his fellow bishops were
 ignorant of the accepted law of the western Church.

Reg. Epis. Glasg., no 58 declares with respect to patronage, that rival claims to the right of patronage are to be contested in the presence of the bishop, and the suit terminated by his judgement.¹ A similar bull of Pope Urban III (A.D. 1186 or 1187) appears as Reg. Epis. Glasg., no 63.

The question of jurisdiction in cases of patronage is the subject of a later chapter.²

It merely proves that there were no authoritative rulings on the points concerned, and that the bishop wished to see these disputable questions of great practical importance settled once for all.

- (I) From the text of the bull which is printed in Haddan and Stubbs, op. cit., p. 47, as well as in the Register of Glasgow, we give the following extract:

".....Eapropter, venerabilis frater, tuis justis postulationibus grato concurrentes assensu, consuetudinem antiquam et rationabilem in Ecclesia tua usque ad moderna tempora observatam, videlicet ut de patronatu inter se aliqui contententes litem contestentur in presentia tua, et tuo iudicio (lis) terminetur, auctoritate Apostolica confirmamus et presentis scripti patrocinio communimus: statuantes, ut nulli omnino hominum liceat hanc paginam nostre confirmationis infringere, vel ei ausu temerario contraire....."

- (2) V. infra p. 75 et seq.

Regist.Epis.Glasg.,nos. 60 and 6I.

No.60. Pope Lucius III (1181-85),in further answer to Bishop Jocelin,states "that it is unlawful for the religious dwelling in your diocese to hold any parish church in their hand^{1.} when it falls vacant or to institute perpetual vicars in any such without your consent." They were also forbidden to impose new pensions^{2.} on churches or augment old ones. Such persons as should be presented by them to churches should seek episcopal institution,and pay the cathedraticum (synodals) and other dues canonically required of them.

The bishop was also authorised to fill up churches belonging to the religious,if presentation were not made by the monastic patrons within three months from the occurrence of the vacancy. In no 6I,Pope Lucius applies the rule to all patrons. If they did not present fit persons to the bishop within three months,they were for that occasion to lose the right of presenting.³ The bishop was to fill the benefice,and no appeal was allowed.

(I)For custody of churches,see F. Barlow,Durham Jursdicional Peculiars,25-7,33-38 and passim;especially pp.133-4,where he points out that custody and induction stem basically

Notes from the previous page(I) Custody, contd.

Custody and induction, as F. Barlow points out, stem basically from the same conception of ownership.

With custody the proprietor enjoys the fruits of his property during a vacancy; with induction he invests the priest with the temporalities; with appropriation he takes the larger part of the property into his own hands. Custody gave the owner a firm hold of the church, and allowed him to appropriate more easily.

Indeed appropriation in its earlier form as an administrative act carried out by the owner can be described as self-induction into possession of the parsonage of which the appropriator had had the custody since the church became vacant.

If the Scottish bishops wished to strengthen their control of the temporalities of the parish churches, then they had to bring to an end these residuary proprietary functions.

(2) Pensions.

See notes on Reg. Epis. Glasg., no 27.

(3) For the jus devolutum,

V. infma, pp. 90-1 with the decretal references there given.

Regist. Epis. Glasg.,no 65.

This bull deals with the important question of hereditary succession in benefices,with the benefice regarded in the feudal way as a hereditary possession,held by priests who married and passed on their living to their sons.

Pope Urban III (1185-87) empowers the Bishop of Glasgow to remove the sons of priests from churches which they claimed to hold as of hereditary right,and of which their fathers had been the last incumbents,unless perhaps the violation of the law could be allowed to pass on account of the time the benefice had been so held and the worth of the occupant. "Praeterea filios sacerdotum paternas ecclesias quasi hereditario jure sibi vendicantes,et eis contra statuta canonum et sanctae ecclesiae libertatem taliter incumbantes, sublato appellacionis obstaculo ab ecclesiis in quibus patres eorum ante ipsos proximo ministrarunt nostra fretus auctoritate removeas,nisi forte aliquem propter probatam honestatem et diutinam possessionem sub dissimulatione videris transeundum."

Reg.Epis. Glasg.,I,p.59.

Succession from father to son in livings was common in twelfth-century England. As early as 1102 Archbishop Anselm's council at Westminster ruled that the sons of priests should not be heirs of their fathers' churches, but the practice persisted throughout the twelfth century.¹ Decretals I, tit. 17² consists mainly of papal prohibitions of the custom whereby, as Pope Alexander III said, men sought to gain possession of God's sanctuary as by hereditary right.³

F.M. Stenton commenting on the agreement by which Bardney Abbey obtained possession of the church of Edlesborough, Buckinghamshire (between 1163-1167 A.D.) says that the chief interest of the document (Cott. Vesp. E xx f. 36b) is that despite all the precautions which earlier ecclesiastical authorities had taken against the transfer of benefices from father to son, one of the strongest bishops of the twelfth

- (1) Anselm's Canons at Westminster, A.D., 1102, c. 7. Wilkins, Concilia, I p. 382. Johnson's, English Canons. Anselm's biographer, Eadmer, says that although a clergyman's son could not according to the law of the church of Rome be admitted into ecclesiastical offices, Pope Pascal dispensed with this by a decretal sent to Anselm, the reason given by Eadmer (Eadmer, ad. calc. Anselmi, Op., p. 76; Paris 1721) being that "the greater and better part of the clergy in England were the sons of priests."
- (2) X I, 17, cc. 3-5, 7, 9, 10-13, 15-17.
- (3) Cf. the following passage from The Letters of John of Salisbury, I, p. 6; in a letter of Archbishop Theobald to Robert Warelwast, Bishop of Exeter, before March 1155...

century (Bishop Robert II of Lincoln) was compelled to acquiesce in an arrangement by which the son of a parish priest was retained as vicar of a church which his father had served, even after the "personatus" of the church had been transferred to a religious house. Stenton concludes, "the feeling that the benefice should be hereditary lasted long and died hard."

"Quid autem turpius est quam, totius divinae legis auctoritate contempta, in sancta sanctorum impudenter irruere, et impellente avaritia, contra jus et fas jus hereditarium in rebus ecclesiasticis, immo et in ipso altari, vendicare?"

(I) Cambridge Historical Journal, III, 1929-31, pp. 5-6.

Also the excellent article by C.N.L. Brooke, Gregorian Reform in Action: Clerical Marriage in England, 1050-1200. Camb. Hist. Journal, Vol. 12 (1956), pp. 1ff.

Cf. also F. Barlow's comment, "And had clerical celibacy which was the aim of reformers in England as on the continent at this time, been achieved, it appears that the position of the lower clergy would have suffered, for a married and often hereditary priesthood acquired a customary position and revenue which protected it to some degree against the arbitrary will of the owners of the churches." F. Barlow, The Feudal Kingdom of England, p. 30.

In the county of Norfolk, just seven years after the date of Urban III's bull to the Bishop of Glasgow (Reg. epis. Glasg., no 65), jurors declared that they had never seen the presentation of any parson to the church of Dunstan, but that it had always been held from parson to parson, and from father to son, until the death of the last incumbent: "quod nunquam viderunt aliquam personam presentari ad ecclesiam de Dunestone, set semper tenuerunt persone, (de) persona in personam et de patre in filium usque ad ultimam personam que ultimo obiit." The parson lately deceased left a daughter Alice, and the king's court ruled that she should hold the patronage. "Let the bishop receive a parson at the presentation of the said Alice."

In some of the churches of which the abbot and monks of St. Benets of Holme were the patrons, the father would accept a pension, and pass the church on to his son, "quasi jure successionis", and this had been done with the connivance not only of the patrons but of the Holy See itself. It would appear that Pope Lucius III did not take a very

serious view of this practice, for in a letter which he wrote in 1184 to the abbot of St. Augustine's, Canterbury on behalf of a poor scholar whose father was the parson at Willesborough (Kent), he suggested that the father might retire, and then the promising young man could be provided with the living and pursue his studies unhampered by financial difficulties.¹

For Scottish examples, see Robertson's *Statuta*, p. 52, *Ecclesiastical Statutes of the Thirteenth Century*, where Statute no. 108 includes the following, "quod filii proximo² ministrantium dimittant beneficium." The Scottish Statute is a small code in itself, based on the Constitutions of Bishop Grosseteste, though Grosseteste of Lincoln has "proximo ministrantium" in the Constitution which commands sons of priests to give up at once churches in which they have immediately succeeded their fathers, and patrons to present other suitable persons to the same. Compare also the London Council of 1237, c. 17.

(1) Holtzmann, *Papsturkunden*, i, 486, 510.

Also Morey, *op. cit.*, p. 56; Poole, *op. cit.*, p. 225.

A Letter of Innocent III to Bp. of Winchester, in *SLI*, p. 82.

(2) *Statuta Ecclesiae Scoticae*, Vol. II, p. 52.

Early in the thirteenth century, certain of the
 abbots of Jedburgh,¹ with the consent of their chapter,
 granted appropriated churches to priests with a right of
 succession to their sons. While this was condemned by
 Honorius III in 1221, it was not repugnant to the general
 feeling of the time.²

(I) Theiner, Vetera Monumenta..., no. 44.

(2) For later references, see Lib. Offic. S. Andree, p. xlix; and
 General Statutes of 1558-9, no. 263 which ordained that
 priests' sons were not to be collated to their fathers'
 churches.

CHURCH PATRONAGE IN SCOTLAND IN THE 12th and 13th CENTURIES

II

Limitation of the rights of patrons.

(b) Evidence from the Calendar of Papal Letters, Vol. I

The **Calendar of Papal Letters**, Vol. I contains three entries which have an important bearing on our subject.¹

Cal. Pap. Letters, I, p. 5.

In 1198 A.D. Roger Beaumont, Bishop of St. Andrews obtained a mandate from Pope Innocent III to restrain monks and canons regular from appropriating to their own uses churches to which they had the right of presentation, unless such churches were exempt from his jurisdiction.

The full text, in Migne "Patrologia Latina", Vol. 214, col. 542 shows the strongly proprietary attitude of these monks and canons regular, and the bishop's endeavour with papal backing to enforce what was the accepted law of the church.

(I) **Calendar of Entries in the Papal Registers relating to Great Britain and Ireland. Rolls Series.**

(a) **Papal Letters, Vol. I, pp. 5 and 29.**

II98 A.D. Migne, P.L., 214, col. 542.

R. EPISCOPO S. ANDREE
NISI INTRA TEMPUS JURIS ECCLESiarUM PATRONI PRAESSENTENT?
DEVOLVITUR AD SUPERIOREM.

Sicut nobis tua fraternitas intimavit, monachi quidam et canonici regulares, Ecclesias quae ad eorum praesentationem pertinent, in tuo episcopatu habentes propriis usibus deputare nituntur nec ibi volunt ad eas, cum vacaverint, personas idoneas praesentare, quin potius occasione concessionis quorundam episcoporum vicarios in eis pro sua instituunt et destituunt voluntate, admissos ita pensionibus onerantes quod nec ecclesiis competenter possunt prae paupertate nimia deservire nec episcopo in episcopalibus respondere nec hospitalitatem, sicut convenit, transeuntibus impertiri.

Nolentes autem ut status Ecclesiarum debitus et antiquus per alicujus insolentiam subvertatur, fraternitate tuae per apostolica scripta mandamus quatenus, nisi a jurisdictione tua exemptae sint ecclesiae supradictae, praemissos excessus studeas rationabiliter emendare; et nisi praefatae personae infra tempus in Lateranensi concilio constitutum ad Ecclesias vacantes tibi personas idoneas praesentaverint, ex tunc tibi liceat, appellatione remota, in eisdem ordinare

rectores, qui eis et praeesse noverint et prodesse; ita quod ex hoc nullum patronis in posterum praejudicium generetur.¹

Datum Laterani, VI Kal. Martii, pont. nostri anno secundo

Appropriation as a formal process subject to² episcopal authority was as yet a novelty; but even when it became so established, there remained strongly proprietary associations in the right of patronage, and possession of the patronage of a church was frequently a step towards complete appropriation.

- (1) Although the Bishop of St Andrews had obtained this mandate from Pope Innocent III, in the next year (1199 A.D.) he gave permission to the monks of Durham to appropriate at will. Cf. North Durham, nos. cccclxvii, cccclxix. Yet appropriation without the permission of the bishop was by this time contrary to the common law of the church. (Decretals 5, 33, 19 which is a decretal letter of Pope Innocent III to the Bp. of Ely, one of a series of letters referred to below; also in Migne, P.L., Vol. 215, coll. 481-2)
- (2) Often it meant little more than the transfer of proprietary rights from a lay lord to a monastic corporation. Cf. Knowles, Monastic Order, pp. 567-8; Tellenbach, Church, State and Christian Society pp. 117-118, also my own notes above. The monastic owners were able to exploit their property by appointing vicars removable at will, and supported by a meagre salary. (See Cal. Pap. Letters I, 5 above). With the spread of canon law, and the greater knowledge of the principles of diocesan reform, the bishops' control of the appointment of the parochial clergy tightened; and in relation to appropriation they were able to insist that appropriations could only be carried through with episcopal permission, that the bishop must have full jurisdiction "in spiritualibus" and that the vicar must have security of tenure and adequate maintenance.

As the late Dr.D.E.Easson observed,the obtaining of the patronage of a church gave the religious a footing on which to accomplish its appropriation.¹ There might be one or two intervening stages.² One of these stages seems to have been the institution of a pension or annual payment. The second possible stage was the appropriation of the revenues of the church for a limited time only,as when Pope Innocent III granted to the monks of Glastonbury an indult to retain for their own uses,during six years,for hospitality and alms, all the churches of their patronage falling vacant,on condition that they appointed fresh vicars.

Dr Easson called my attention to the case of the church of Fithkil (Leslie),as a notable example of the growing practice by which Inchcolm,as well as other contemporary houses paved the way for obtaining a church "in proprios usus",by acquiring first the right of patronage. In 1239 , a controversy between the Bishop and Chapter of Dunkeld and Merleswain of Ardrross regarding the right of patronage to the church of Fithkil was litigated for some time before the Cardinal Otho,Papal legate to Scotland,but was eventually referred,with the permission of the Cardinal,to the arbitrat-

(1)Charters of the Abbey of Inchcolm,Edited by D.E.Easson,ppxxv
 (2)Snape,Monastic Finances,pp.76ff.

ion of the Bishop of Dunblane and three others.¹ Their award issued in 1239 at Kelso provided that the right of patronage should remain with Merleswain and his heirs for ever, that Merleswain should agree to the church being made a prebend of Dunkeld, after the death or resignation of the then rector, that thereafter Merleswain and his heirs should present to the Bishop or his successor in office a fit person as incumbent for the church, the nominee being bound to pay annually to the Church of Dunkeld ten marks and that the existing Rector of Fithkil should retain his incumbency by virtue of Merleswain's right of patronage.

The proposals embodied in the above decree-arbitral were eventually departed from, for about 1263 we find that Merlaswain's daughter and her husband had made over their patronage to Inchcolm; and about the same time, Alexander Comyn, Earl of Buchan, on his own behalf and on behalf of Thomas Meldrum, had been induced, in compassion for the poverty of the monastery and desiring a share in its prayers, to give up his claim to the patronage in favour of the abbey. Shortly after, in consideration of these concessions, the Bishop of Dunkeld granted the canons the church

(1) A reference to four arbiters is unusual, an odd number being recommended by Roman Law (D., IV, 8, 17), Canon Law (X. I, 43) and Regiam Majestatem, II, 5).

"in proprios usus".(Charters of the Abbey of Inchcolm,Nos. XVIII,XXV-XXVII)

The course followed in the case of the church of Fithkil has many parallels in monastic records. Before March 1285/6 Coupar Angus Abbey obtained from Hugh of Abernethy the patronage of the church of Mathylour¹,and by May 1328,it was appropriated to the monastery.Between 1305-9 they obtained the patronage of the church of Fossoway,and this church between 1320-8 became theirs "in suos proprios usus"². About 1308 Marjorie,Countess of Athole gave them the patronage and the church lands of Alvah in Banffshire;and circa 1320 the Bishop of Aberdeen gave them leave to appropriate it,though this did not mature for half a century³. Dr.Easson has also traced in great detail the process by which the monks of Coupar obtained full possession of the church of Airlie⁴.

(1)Charters of the Abbey of Coupar Angus,CXII.

(2)Ibid.,LXXXV,CIII

(3)Ibid.,CI,also note p.248.

(4)Ibid.,pp.xxxixff.

Cf.also Professor David Knowles review of the book, in S.H.R.(1949,p.190). With reference to Dr.Easson's scholarly review of the process by which Coupar obtained the church of Airlie,Professor Knowles says,"The whole episode is carefully set out by Dr. Easson,and he gives also some interesting instances of disputes over teinds (anglice "tithes") and the acquisition of churches".

The Chartulary of Lindores enables us to trace the steps by which the church of Collessie was granted to the Abbey of Lindores "in proprios usus", although in this particular case the initial gift of the patron envisaged the monastery's obtaining full possession. Roger de Quincy, the Earl of Winton, as patron, granted the church of Collessie "in usus proprios", if they can obtain leave for the transfer. It is thus recognised that the consent of the bishop of the diocese must be obtained. The Earl made the grant, as far as it lay in his power to make it; or as it is expressed in the Bishop of St. Andrews' charter of concession, "quantum in ipso fuit."² The church of Collessie was not vacant at the time, and the grant would take effect only on the rector's death or resignation which was the usual stipulation in appropriations. (cedente vel decedente magistro Ada de Malcariuston,³ Rectore dicte ecclesie) It would appear that his resignation

(1) Chartulary of Lindores, no. CXLI.

(2) Ibid., no. CXLII.

Cf. the clause "totum illud donationis quod videbar habere in ecclesia" in the grant by Thor to the Abbey of Holyrood of the church of Tranent, circa 1150 A.D. (Charters of Holyrood, No II.

(3) Lindores, CXLI, CXLII.

had been anticipated, or perhaps arranged, for the Bishop of St. Andrews confirmed De Quincy's grant, subject to the resignation of the rector on 5th June, 1262, and Malcarviston resigned the church into the hands of Thomas, Abbot of Lindores on the 11th June of the same year.^{1.}

Monasteries were usually eager to obtain possession of their churches once permission to appropriate had been granted, and for fairly obvious reasons. The rector might retain the church for many years after permission to appropriate had been granted, and meanwhile changes disadvantageous to the appropriation might take place. A bishop who was known to favour an appropriation might be succeeded by one who would use all his powers to prevent it.^{2.} Or the church might fall vacant when the temporalities of the monastery were in the king's hands, and the king might exercise his right to present to the rectory. Difficulties might also arise if the rector died at the Apostolic See, or if he obtained possession in any way which would give the pope a claim to provide a successor to his benefice. Considerations such as these may explain the seemingly undue haste with which monasteries endeavoured to get possession of churches appropriated to them. The fear that if matters were allowed

(1) Chartulary of Lindores, CXLIII, CXLIV, CXLV, CXLVI.

(2) Cal. Pap. Letters, I, 605-6.

to take their course, the vacancy might occur at a time unfavourable to them must often have led them to try to get the rector to resign at an early date. Various inducements might be offered. Through the monastery's own patronage, or by the help of some official in church or state, the parson might be presented to a benefice of equal or greater value which would necessitate his resigning the church. Or if this could not be done, an agreement to pay the rector a pension might induce him to resign. Such a transaction savoured of simony, and it is probably for that reason that detailed accounts of these bargains are comparatively rare, although in a few cases the exact amount the rector was to receive has been recorded.

As the middle ages wore on, the attitude to the benefice became increasingly calculating. R.H. Snape speaks of a traffic in patronage in which various monasteries were implicated, and A. Hamilton Thompson calls attention to the existence of brokers who arranged exchanges. Their activities led to the issue of Archbishop Courtenay's strongly-worded mandate against "Chop - Churches". While there is no lack

(1) R.H. Snape, op.cit., p. 77.

(2) Hamilton Thompson, op.cit., 107.

(3) Wilkins, Concilia, iii, pp. 215-7, for Courtenay's "litera contra choppechurches".

of exchanges which may be taken as genuine, there are many instances in which a man exchanges one church for another, and then a day or two later or even on the same day, exchanges this for a third. The obvious inference is that the first of the exchanges is a transaction with a middleman who arranges the second; and it is possible, as the late Professor Thompson pointed out¹, to trace the existence of rings of people who by obtaining advowsons by purchase or lease kept up a brisk trade in benefices. Although Archbishop Courtenay's mandate did not stop the abuse, it seems to have warned offenders to proceed with greater caution.

Courtenay's charges were much to the point; false statements by clerks as to the titles which they held to the benefices which they proposed to exchange and as to their value were common (cf. Mollat, *La Collation*... p. 24; C.P.L. v, p. 472); so also were inquests ordered by the pope upon reports or accusations of simony. A clerk of the diocese of St. Andrews paid another to exchange with him, and there is evidence of pensions being offered as bribes for exchange (C.P.L. x, 406, 503).

What lies behind the increasing rate of these exchanges it is difficult to say. Debt might lead a man to put his benefice in the hands of a broker and exchange it for a poorer; but the broker's trade cannot account for the process as a whole. No doubt some exchanges were merely for mutual benefit and convenience; and along these lines we can analyse a variety of reasons which led to such exchanges, as a whole the phenomenon eludes us. Yet when a man worked his way through a score of benefices and resided in none, he was obviously chopping his churches for his own or his family's profit.

(1) He has tracked down a ring of canons of Lincoln who specialised in the negotiation of exchanges. Thompson, *op. cit.*, p. 109.

II

Limitation of the rights of patrons(b) Evidence from the Calendar of Papal Letters, Vol. I

(contd)

Cal. Pap. Letters, I, p. 29

In 1207, William Malvoisine, Bishop of St. Andrews, put to Pope Innocent III several questions with respect to the bishop's rights and jurisdiction over religious houses and the parishes belonging thereto. The full text in Migne (P.L. 215, col. 1138) shows that one of the questions related to the conditions on which the religious could take possession of churches given to them "in proprios usus". Could they, on the voidance of the churches take possession on their own authority? Or should they be put in possession by the diocesan? To which the pope replies that unless there is a special provision that when the churches are vacant, they can enter without consulting the bishop, it is not lawful for them so to take possession.

The Bishop of St. Andrews' question and the papal reply are closely paralleled in the decretal letter letter (X 5, 33, 19) which gives Innocent III's reply to one of a series of questions put by the Bishop of Ely¹. The decretal to the Bishop of Ely is dated 19th December, 1204, and reads

as follows;

"Interrogasti preterea utrum viris religiosis, quibus a sede apostolica est indultum ut ecclesias suas in proprios usus possint convertere decedentibus personis earum, licet auctoritate propria possessionem earundem ecclesiarum intrare, vel per diocesanum in ipsam sint potius inducendi. Ad quod utique respondemus quod, nisi forte in indulgentia summi pontificis id contineatur expressum: 'suo episcopo inconsulto,' in possessionem ipsarum eis non est licitum introire, quia per indulgentiam huiusmodi episcopali juri non credimus derogari."

The text of the relevant portion of Pope Innocent III's reply to the Bishop of St Andrews reads;

"....Quaesivisti praeterea utrum viris religiosis, quibus parochiales ecclesiae in usus proprios sunt collatae, decedentibus personis earum liceat auctoritate propria possessionem earundem ecclesiarum intrare, an per diocesanum episcopum in ipsam sint potius inducendi. Ad quod utique respondemus quod nisi eis specialiter sit concessum ut cum vacaverint per se ipsos ingrediantur easdem, profecto in possessionem ipsarum, suo episcopo inconsulto, non est eis licitum introire. Quia....."

(I) The reply of Pope Innocent III to the queries of the Bishop of Ely is of great importance as a declaration of the law on many difficult points.

Questions of patronage and appropriation loom large. Cf. for example, Decretals III, 38, 29 with its reference to the two rulings of Pope Alexander III.

"Nos igitur, bone memorie Alexandri pape predecessoris nostri vestigiis pro sui reverentia inherentes, qui inter presentatos a laico et clerico patronis distinguens, in presentatis a laico conditionem possidentis censuit potiore, dicimus quod institutio presentati secundo loco a laico patrono robur obtinet firmitatis. Verumtamen constituimus ut episcopus qui presentatum idoneum malitiose

The question has been raised by Dom A Morey,¹ R.A.R. Hartridge and others as to whether the constant reference to the pope on points of law was due to ignorance on the part of those who made the inquiries. The answer would appear to be that the law on many points, e.g. patronage and appropriation, was still in process of definition; and there was special need for clarification. But even where the law was becoming clearly defined, bishops in England as in Scotland were still finding it desirable to reinforce their right with papal authority. It could forestall the delay of an inevitable appeal to the Holy See from the parties themselves.

recusavit admittere ad providendum eidem in competenti beneficio compellatur, quatinus puniatur in eo in quo ipsum non est dubium deliquisse."

Innocent III would appear to have in mind the statements of Alexander III in Decretals, 3, 38, 24 and Decretals 3, 38, 5.

(1) Cf. Morey, op.cit., p. 76; Hartridge, op.cit., p. 33, n. I.

Also my notes under Reg Epis. Glas., no 58, with the references there given.

II

Limitation of the rights of patrons.(b) Evidence from the Calendar of Papal Letters, Vol. I.

(contd.)

Calendar of Papal letters, I, 29.

The other relevant entry in the Calendar of Letters under the year 1207 is an indult to William Malvoisine, Bishop of St. Andrews, to put fit persons into churches belonging to religious who wilfully neglect to present to him chaplains or clerks within the canonical limit of time.

The text in Lawrie's Annals agrees with that in Migne, P.L. 215, 1248. Some of the churches the monks hold fully appropriated to them; in others they have only the right of patronage, but still manage to exact an annual payment from these churches. The Bishop of St Andrews complains to Pope Innocent III that when the churches which pertain to them in the modes mentioned fall vacant, the monks stubbornly refuse to present to the bishop chaplains or clerics within the time laid down by law.^{2.}

(1) A.C. Lawrie, Annals of the Reigns of Malcolm and William. Kings of Scotland, p. 355.

(2) See notes under previous sections of this chapter.

Pope Innocent III authorises Bishop William to provide suitable clerics to those churches, but in such a manner as not to prejudice the patrons' rights for the future.

De supplenda negligentia patronorum

V.V. EPISCOPO S. Andreae, in nostra praesentia tua proposuit fraternitas conquerendo quod cum quidam monachi et alii viri religiosi quasdam parrochiales ecclesias in tua diocesi teneant ad usus proprios deputatas et in quibusdam aliis, pro quibus annuum censum accipiunt, jus obtineant patronatus cum easdem ecclesias vacare contingit, capellanos et alios clericos instituendos ibidem tibi, prout de jure tenentur, negligunt praesentare. Unde nobis humiliter supplicasti ut tibi super hoc dignaremur utiliter providere. Quocirca fraternitati tuae auctoritate praesentium indulgemus quatenus si praedicti religiosi viri, vacantibus ecclesiis quae praedictis modis ad ipsos pertinere noscuntur, tibi, prout de jure tenentur, capellanos vel clericos infra tempus a canonibus diffinitum malitiose praesentare contempserint, tu eisdem ecclesiis de personis idoneis providendi liberam auct. nostra suffultus sub cujuslibet contrad. et app. ob habeas facultatem, ita tamen ut propter hoc nullum eis praedictum generetur. Datum Sutrii. id Novemb. anno decimo.

(Migne, P.L., Vol. 215, col. 1248)

II

Limitation of the rights of patrons

(c) Evidence from other sources (late twelfth and early thirteenth century.

In the instances referred to above, the Bishops of Glasgow and St Andrews were undoubtedly attempting to enforce what was the accepted law of the church. It would appear that the bishops' rights and the interests of parishioners and parish churches were more threatened in Scotland than elsewhere, because a higher proportion of parochial cures had passed, by about 1200 A.D., into possession of the religious.¹

For the dispute between the Abbey of Kelso and the Bishops of St. Andrews and Glasgow, see Lawrie's Annals, pp. 331-334; and for commentary, Dr. Frank Barlow's, Durham Jurisdictional Peculiars, pp. 132ff.² For similar arrangements with Arbroath Abbey, see Reg. Vet. de Aberbrothoc, Nos. 148 and 167. By the last named, Arbroath 167 (1202-1209), the Bishop of St. Andrews enforced on Arbroath Abbey [the obligation

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- (1) Mr. Ian Cowan, with whom on Prof. Croft Dickinson's kind introduction I have had an opportunity of discussing common problems, is working on the subject of appropriate.
 (2) The legation of John of Salerno gave a lead to reforming activity on the lines laid down by the Lateran Council of 1179 and subsequent councils. For the bishops of St. Andrews' dispute with Coldingham, Raine's, N. Durham, App. nos 462, 467 and 473 provide the record source; and Barlow's Durham Jurisd. Peculiars is an illuminating commentary.

the obligation of presenting "perpetual vicars", i.e. clerks or priests (perpetuos vicarios, clericos scil. vel sacerdotes)" to their appropriated churches who were to receive their cure of souls at the bishop's hands, answering to him for episcopalia, namely synodals, aids and procurations "secundum quod continetur in lateranensi concilio."

The references are; J. Raine, *The History and Antiquities of North Durham* (London 1852); F. Barlow, *Durham Jurisdictional Peculiars* (Oxford 1950)

- (I) R. A. R. Hartridge, *History of Vicarages in the Middle Ages* (Cambridge, 1930) has given currency to the idea that the perpetual vicar, instituted by the diocesan, was mainly a product of the thirteenth century, consequent on the decree of Pope Innocent III on the subject, in the Fourth Lateran Council of 1215 (c. 32) which he describes as the Magna Carta of the parish priest.

This is the passage from Hartridge (*op.cit.*, pp. 20-21), "At the great Lateran Council (IV) of 1215, canon 32 was enacted as follows:

'A vicious custom that must be extirpated has grown up in certain parts, where patrons of parish churches, and certain other persons claiming the profits for themselves, leave to the priests deputed to the service of them such a scanty portion that from it they cannot be suitably (congrue) sustained. For as we have learned for certain, there are some regions where the parish priests have for their sustentation only the fourth of a fourth, to wit, the sixteenth part of the tithes; whence it cometh that in those regions scarce any parish priest can be found who is even moderately well-educated. (Unde fit ut in his regionibus pene nullus inveniatur sacerdos parochialis qui vel modicam habeat peritiam litterarum). Since therefore

Note from previous page (contd).

it is not lawful to muzzle the ox that treads the corn, but he who serves the altar should live of the altar; we have ordained that by a certain custom of the bishop or patron, not withstanding any other, a sufficient portion be assigned for the priest.'

Where possible, the rector was to reside and officiate, but elsewhere

'he should take care to have a perpetual vicar canonically instituted, who (as is aforesaid) should have a fit portion of the profits of the church.'

.....This canon may be termed the Magna Carta of the parish priest."

Recent studies have shown that the view of R.A.R. Hartridge needs qualification; and that Dr. Hartridge post-dated the institution of vicarages, because he paid too little attention to the crucial decades of the late twelfth century. (Cf. F.M. Stenton, *Acta Episcoporum*, Cambridge Historical Journal, III (1929), pp. 1ff; Morey, *Bartholomew of Exeter*, pp. 73-74; C.R. Cheney, *From Becket to Langton*, pp. 131ff; D. Knowles, *Religious Orders*, p. 290, and *Monastic Order*, pp. 567-8, 599-600; A.L. Poole, *From Domesday Book to Magna Carta*, p. 227; H. Thurston, *St. Hugh of Lincoln*, pp. 320-I, 325)

From a great wealth of evidence we select the following example, a case transmitted to the Curia from the diocesan court of the Bishop of Worcester (Bp. Roger, II64-79). The prior and canons of Kenilworth presented to the bishop a priest named Ralph to serve the church of Saltford in Warwickshire. The bishop instituted him on securing a verbal undertaking ~~that~~ Kenilworth would assign a suitable portion of the revenues to his maintenance. Later a dispute arose as to the amount of the vicarage.

Note from previous pages (contd)

Ralph claimed an amount sufficient for his support. To evade his responsibilities, the prior declared that Ralph was an annual, not a perpetual, vicar; and tried to eject him from the vicarage altogether. Ralph appealed, putting his benefice under the protection of St. Peter; and went to the Curia. Pope Alexander III instructed Bartholomew, Bishop of Exeter, to confirm Ralph in the perpetual vicarage of the church, and to assess the vicarage, without appeal. Morey who cites this case, says of the wording of the decretal, "It suggests that the process of definition hitherto attributed almost exclusively to Innocent III should be ante-dated, and that Alexander III was already laying down the principles on which the Lateran Council of 1215 was to build. The Saltford case provides an early instance of the use of the phrase "perpetual vicarage"; certainly the principle in favour of perpetual vicarages, and against the ejection of their holders is now firmly laid down:

'Nolumus, writes Alexander III to the Bishop of Exeter, quod in ecclesiis Dei annui sed perpetui vicarii debeant constitui.'

The decretal might well be regarded as a first draft of that 32nd canon of the Lateran Council which has been termed the Magna Carta of the parish priest."

(See Morey, op.cit., p.74; and for the decretal, ibid., pp.128-9, which is printed from B.M. Royal MS.10 A,II, f.35v; ed.Lohmann; Coll.Wigorn.IV,42.)

CHURCH PATRONAGE IN SCOTLAND IN THE 12th and 13th CENTURIES

III

The Presentation of Candidates to the Diocesan

On the important question of the practice of patrons presenting candidates as incumbents to the diocesan , there is only fragmentary evidence in Scotland for the vital period. There is not much more evidence in England; but for the next period, when the practice had become normal and indeed obligatory, there are in England the series of Bishops' Registers, the first relevant one being the "Rotuli Hugonis de Welles", Bishop of Lincoln. Unfortunately for Scotland not a single Bishop's Register appears to have survived.

An early example of a patron presenting a rector to his diocesan and of the rector's being received by him is in "Registrum episcopatus Glasguensis", No. XI.³ Here about 1147-51, Bishop Herbert, as representing the church of Glasgow, is recognised by the Bishop of St. Andrews as patron of the church of Lohworuora (Borthwick). He presents (tradere) the

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- (1) Published by The Lincoln Record Society, Vols. 3, 6, and 9; also by The Canterbury and York Society.
 (2) For the following important references for the twelfth century I am indebted to a correspondent, G.W.S. Barrow.
 (3) Printed also in A.C. Lawrie, Early Scottish Charters, No. 230, although Lawrie failed to transcribe the word "personam", perhaps because the abbreviated form (p^m) in the printed

Prior of Scone to the Bishop of St.Andrews who receives him as parson (in personam....suscepimus).

"Robertus Dei gratia episcopus Sancti Andreae, Omnibus sanctae matris ecclesiae filiis salutem. Sciant praesentes et futuri nos concessisse et per libram saisisse Herbertum Glasguensem episcopum de ecclesia de Lohworuora sicut de possessione Glasguensis ecclesiae. Praesentibus et assensum praestantibus David illustri Scottorum Rege et Henrico filio ejus, ita ut ecclesia Sancti Andreae habeat omnes consuetudines episcopales in ecclesia de Lohworuara" (spelt Lohworuora four lines above) "sicut in ceteris ecclesiis Laudoniae a priore de Scona, quem tradente nobis praefato Herberto episcopo in personam ejusdem ecclesiae suscepimus. Praesentibus et his testibus Gregorio Dunchelden. episcopo, Andrea Chatan. episcopo, Gaufrido abbate de Dunfermlin, Ernaldo abbate de Calceho, Alfwino abbate de Sancta Cruce, Willelmo abbate de Strivelin, Roberto priore de Sancto Andreae, Osberto priore de Sancta Cruce, Thoma priore Scone, Thor archidiacono, Eyolfo decano....."

text was unfamiliar to him.

- (I) Robert, Bishop of St. Andrews, states that he has granted "et per libram saisisse" the church of Lohworuora to Herbert, Bishop of Glasgow, "sicut de possessione Glasguensis ecclesiae." The King and his son Henry were present and assented

Lawrie casts doubt upon the authenticity of this document, at least in its extant form; first because Lohworuora (Borthwick) belonged to Scone Abbey not to Glasgow; and secondly because he thought the list of witnesses a fabrication. But the document may well be authentic, and Borthwick may have been the subject of a dual claim; an ancient claim from Glasgow put forward by Bishop Herbert on account perhaps of its dedication to and association with St. Kentigern, and a more recent wish of King David I to grant it to Scone Priory. The compromise which must lie behind the presentation by one bishop to another of the Prior of a religious house as parson of a parish church is susceptible of explanation along these lines. According to canon law, one bishop's presentee to the bishop of another diocese ought to be received by the second bishop, unless unsuitable.¹

to the grant. The bishop reserved to the church of St. Andrews all episcopal rights in the church of Lohworuora as in other churches in Lothian. Lawrie finds it difficult to understand this, because the church of Lohworuora belonged to the Abbey of Scone, and the list of witnesses seems doubtful. This difficulty is discussed above.

(1) Decretals; 3, 38, 18.

This early example is, of course, wholly concerned with ecclesiastical personages. One would expect the practice of presentation to the diocesan to be first observed among the clergy themselves, and then to spread to the laity.

It appears from the "St. Andrews' Register" that by 1178-79 it had become normal, at least in Lothian, and probably in the diocese of St. Andrews generally, for a layman to present an incumbent to the bishop for institution. There is a document relating to the church of Barne, in the patronage of Alexander of St. Martin (read Barue, i.e., Bara, in the demesne of the St. Martin family). He reserves the right of himself and his heirs of presenting the parson of the church to be instituted, i.e. by the bishop.

Then we reach the last stage before the ultimate regular practice of the middle ages. This penultimate stage is represented by a deed by which the bishop grants the church or benefice to the incumbent, as though making a grant of property, but with a statement that the incumbent has been

(I) Registrum Prioratus Sancti Andree, pp. 333-334.

presented to him by someone who may be presumed to be the patron.

One such document¹ comes from the chancery of Bishop Roger Beaumont of St. Andrews, circa 1199-1200, and represents what was no doubt the most up-to-date form of doing this particular thing in Scotland at the time.² Bishop Roger grants to William, son of Adam of Nevay (Neuihn) (Angus), in alms, the church of Lour (i.e., the later Meathie-Lour, Forfar) "at the presentation of the said Adam." He is said to have and to hold the aforesaid church as any parson holds his church in the bishop's diocese, saving the bishop's rights and dues (salvis episcopalibus).

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- (1) A summary will be found in Historical MSS. Commission, Report on the Duke of Portland's MSS., Vol. II, pp. Iff. The original is in the British Museum.
 - (2) Had there been anything more up to date available, Beaumont and his officials would have known about it.

The regular practice of the middle ages was for the patron to send letters of presentation, the bishop to issue letters of admission and institution, and the appropriate official, usually the rural dean, to induct the incumbent into the church. In thirteenth century records, instances can be found in a number of dioceses of the practice of issuing letters of admission and institution, with the induction of the incumbent following that. It is probable that the bishops of St. Andrews and Glasgow kept registers of these matters, but if so, they are lost.

(I) The student of Diplomatic will find much of interest in *Acta Stephani Langton, Canterbury and York Society, 1950*; especially in the section, Letters of Admission, Institution and Collation, where various forms are given and the dates at which they appear.

"The reforms of the late twelfth and early thirteenth centuries and the increasing control of the bishops over parish churches, followed by the ordination of vicarages in appropriated churches, brought the bishop into a stronger position vis-a-vis the patron, with the result that by the second half of the thirteenth century the letter of presentation took the form of a humble request that the bishop would institute the presentee. The letter of institution changed from a charter with a general address and witnesses (as in the case of a grant of land) to a letter addressed to the clerk personally..." Ibid, pp. xxxv-xxxvi.

Continental scholars have paid far more attention than we have done to original episcopal "acta" of the middle ages, perhaps because there is a tradition of diplomatic study on the continent which we lack in Britain. Cf. C.R. Cheney, *English Bishops' Chanceries*. (M.U.P. 1950).

CHURCH PATRONAGE IN SCOTLAND IN THE 12th and 13th CENTURIES

IV

Jurisdiction in Cases of Patronage

In Scotland the church's claim to jurisdiction in cases of patronage seems to have been successfully upheld. This claim of the church to jurisdiction in such cases was a logical consequence of the new conception established by Pope Alexander III of the "jus patronatus" as a "jus annexum spirituali"¹; and it was a deduction which he did not fail to make, as for example in the famous decretal letter to the King of England which appears in the Appendix Concilii Lateranensis² in the form, "Cases of patronage of churches are so connected and bound up with ecclesiastical cases that they can only be decided by judgement of the Church and settled before an ecclesiastical judge". "Quanto te.....Causae patronatus ecclesiarum ita junctae sunt et connexae ecclesiasticis causis, quod non nisi ecclesiastico iudicio valent diffiniri, et apud iudicem ecclesiasticum solummodo terminari."

(1) Decret. Greg. Lib.3, Tit.38, c.16.

V. supra p.18.

(2) Appendix Concilii Lateranensis (cited as ACL) is the decretal collection printed under this name in Mansi, Concilia, XXII, pp.248ff. Cf. Schneider, Die Lehre von den Kirchenrechtsquellen p.127.

For the decretal letter of Pope Alexander III, quoted above, the reference is ACL, XLVII.4

But the church could not maintain her jurisdiction in disputes as to patronage. In Germany, France and England such disputes were soon increasingly referred to the temporal courts, although in Normandy special tribunals were provided¹. Was the choice of a cleric to be regarded as a religious trust or as a proprietary right? In England the latter view persisted; the advowson was treated as nearly as possible as if it were a piece of land. "The actions by which it is protected, the manner in which it is conveyed and in which the doctrines of seisin and disseisin are applied to it, the mode in which it will devolve on death: all follow the rules as to corporeal hereditaments"³.

A modified text of this decretal letter is given in the Gregorian Decretals (X.2, I, 3.). "Causa vero juris patronatus ita conjuncta est et connexa spiritualibus causis, quod non nisi ecclesiastico iudicio valeat definiri, et apud ecclesiasticum iudicem solummodo terminari." The exact date is uncertain.

See also a letter to the prelates of France or England denouncing those who hold patronage or benefice by judgement of a secular court. (ACL, L, 33-34 : Decretals, 3, 38, 21)

- (1) For France, "Item le roy a la cognoissance des droits de patronage tant et si longuement comme il en est debat entre les patrons; car la controverse des patrons regarde plus temporalité que spiritualité." Laboulaye et Dareste, Le Grand Coutumier, p. 102.
- (2) Cf. G. Mollat, Le droit de patronage en Normandie, du xie au xv siècle, in Revue d'histoire ecclesiastique, XXXIII (1937), pp. 463ff.
- (3) W. S. Holdsworth, A History of English Law, vol. III, p. 140 with the copious references there given.

The first clause of the Constitutions of Clarendon (A.D. 1164) reserves to the Curia Regis questions of Presentation and Advowson for the decision of which the Assize of Darrein Presentment was issued. "De advocacione et praesentatione ecclesiarum si controversia emergerit inter laicos, vel inter laicos et clericos, vel inter clericos, in curia domini regis tractetur vel terminetur." Sir Maurice Powicke comments, "The control of the advowson by the common law was now symbolic of a national policy; and it is hardly an exaggeration to say that the English Reformation, so peculiar in its character, was implicit in the first clause of the Constitutions of Clarendon."

(1) Text as in Stubbs' Select Charters, 9th edit., p. 164.

For an interesting variant which begins simply with the phrase "de praesentatione ecclesiarum", and may have been an earlier draft, see A. Saltman, in Bulletin of the Institute of Historical Research (BIHR), University of London, XXII, p. 155.

The process whereby the new concept of patronage gained acceptance in England was a slow and complex one; but the reference to "presentation" in the Constitutions shows that it was well advanced by 1165 A.D.

(2) F. M. Powicke, Medieval England, pp. 50-51.

Cf. also the following passage from F. W. Maitland, Roman Canon Law in the Church of England, pp. 62-63,

"About half those texts in the Gregorian code that deal with the right of patronage are decretals sent in the twelfth century to English bishops. . . . Neither Henry nor Becket can have been fully aware of the extreme importance of the question that was at stake, for they could not foresee the limitless claims over all ecclesiastical preferments that were to be made by the popes of a later age. Nevertheless there are some who will think that the true Magna Carta of the 'Liberties of the English church' is Henry's assertion that advowsons are utterly beyond the scope of the spiritual tribunals."

While on one technical point Pope Alexander III recognised an exception to the ordinary rules "*secundum consuetudinem Anglicanam*"¹, the Papacy never abandoned the claim that cases concerning advowson should be heard in the ecclesiastical court; and English churchmen would go no further than admit that the hearing of such cases by the lay court was a practice which they could not prevent.²

(1) X, 3, 38, 19. The exception was strictly limited. The priest once instituted could only be removed when the patron who presented him had not been in possession of the advowson, that is, had not had the last presentation. This concession was necessary to the English system because, although a claimant had made good his right to an advowson, he had not possession of it until he had actually used his right to present to the benefice. Glanvill recognised the limits of the concession. (*De legibus Angliae*, iv, 10). See Eng. Hist. Rev. lvi, 193.

(2) "*De patronatu, cuius cognitionem rex de facto exercet*" (C. of Lambeth, 1261; Wilkins, i, 748).

Also Lyndwood, *Provinciale*, p. 316, gl. ad v. *jura patronatus*: "*cuius cognitionem ad se pertinere vendicat curia regia licet causa juris patronatus sit annexa spiritualibus et sic pertineat ad forum ecclesiasticum: de iudi. c. quanto. Sed consuetudo dat cognitionem foro temporali....*"

Even if advowson was to be adjudicated upon in the king's court, other matters were bound up with it; the rights of parish churches over chapels, the possessory or proprietary rights of the incumbent, or the right of a third party to a pension. Recent studies have called attention to the complexity of legal problems about advowsons, and have shown more activity in the church courts touching questions of patronage than was formerly supposed. (Cheney, C.R., *BIHR*, 1952, p. 21; E.H.R., 1952, p. 481; E.H.R., 1941, p. 191). Also Morey, *Bartholomew of Exeter*; and C.R. Cheney, *Harold Priory*, op. cit. where the documents show how disputes which involved ecclesiastical patronage might despite the Constitutions of Clarendon come up repeatedly for settlement before ecclesiastical judges provided the case could be treated as one concerning disputed incumbency, and the words patronage and advowson were avoided.

In Scotland, under King William the Lion, an effort was made to introduce English practice, when a dispute arose between the Prior and Canons of St. Andrews and Saher de Quincy regarding the patronage of the church of Leuchars.

As the case illustrates the clash between the civil and ecclesiastical jurisdictions, and also shows the working of the papal judge-delegate system, we shall examine it in some detail.

In a protracted dispute between two Oxford houses, Osney and St. Frideswide's, although the words "advowson" and "patronage" are avoided, it is evident that the decision by judges delegate of the pope judicially determined what had happened in the past to the advowson of the rectory, and determined for the future who should present a vicar to the church. The case is summarised in Morey, Bartholomew of Exeter, Bishop and Canonist, pp. 56-59. The documentation is in Cartulary of Osney Abbey (Oxford Historical Society), II, 214-216, 219-30.

The Church also had her say in many cases of advowson settled by final concord in the king's court, for the fine often provided for a pension to be paid to the losing party, chargeable upon the parochial revenues; and the king's court respected the law of the church (III Lateran Council c. 7) which forbade the imposition or augmentation of charges on churches without the bishop's approval.

To conclude; the legal problems about advowson resulted from the fact that both the Crown and the Church had an interest which might be a vital one in the presentation to a benefice. The crown's interest lay in the advowson as a property whose lawful ownership had to be protected, the Church in the lawful admission of an incumbent. The bishop had to make sure that the church was really vacant, that the right of the patron to present was valid and that the person presented was suitable. Any number of difficulties might arise as J. W. Gray shows in EHR, lvii, pp. 481ff. He suggests that after 1180 the king's court gradually tightened control over benefices

- (I) For the papal use of judges-delegate, the fullest study in English is in Morey, op. cit., pp. 44ff. V. infra. | 83.

Saher de Quincy preferred pleading in the king's court, and there obtained a settlement. The Prior afterwards complained that it was wrung from him by the threats of the king, and represented it as illegal and in "enormlesion" of the church. The Pope without hesitation appointed his judges-delegate to investigate and decide the whole matter according to the law of the church.

It is unfortunate that we are not told more of the proceedings in the king's court, for it is unusual in Scotland to find that court asserting jurisdiction in relation to a right of patronage. It is still more unusual to find a pope prepared to review action in the king's court, and to base that review on unjudicial conduct on the part of the king; but Innocent III was a pope of unusual distinction and courage.

The documentation of the case will be found in *Registrum Prioratus Sancti Andree*, p.231, pp.350-352.

In all four papal bulls were issued. On 24th October, 1205 the pope issued a mandate in favour of the abbots of Arbroath, Cupar and Lindores. The prior and canons had represented to him that Nes, son of William, had granted to them the church of Leuchars, and that the gift had been confirmed by

(1) *Reg. Prior. Sancti Andree*, p.231, p.350.

royal charter "*sicut mos est regionis illius.*" Saher de Quincy, a grandson of the original donor, now claimed the right of patronage, and had presented to the benefice a relative, Symon de Quincy. The pope commands the said abbots to reinstate the prior and canons in their rights.

Saher now raised proceedings in the king's court, and cited the prior before that tribunal. When he compeared, the king tried to subdue him by threats. It would appear that the papal delegates were unwilling or unable to deal with the conflict of jurisdictions, and did not proceed further in the matter. Whereupon the prior complained to the pope.

On 7th June 1206, Innocent III issued a further bull to the three abbots reproving them for their unnecessary delay in executing his orders. Their negligence had caused the prior considerable loss and expense, "*dampna non modica et expensas*"^{2.}

On 9th June 1206, the same pope enjoins the abbots of Melrose, Dryburgh and Jedburgh, or any two of them, to intervene in the matter.^{3.} Sir Saher de Quincy, he says, had carried the dispute as to the patronage of the church of Leuchars

(1) Reg. Prior. Sanctie Andree, p. 350.

(2) *ibid.*, p. 350-I

(3) *ibid.*, p. 351.

into the king's court contrary to the custom of the Church of Scotland (contra consuetudinem ecclesiae scoticanae)^{i.}

In the following year, 6th June 1207, a fourth mandate was issued by Innocent III, this time in favour of the Bishop of Brechin, the Abbot of Scone and the Prior of Arbroath, or the bishop and one of the other judges-delegate.^{2.} Saher de Quincy had appealed to the king, and had cited the prior and canons. They had been compelled by the king to accept a settlement which was to the great prejudice of their church. The judges-delegate were to compel the attendance of witnesses, and decide the matter according to Canon Law, "quod canonicum fuerit decernatis." We are not told the outcome, but the church of Leuchars and the right of patronage still remained with the priory in 1294.^{3.}

While Dowden dismisses this dispute as of no constitutional importance and as illustrating simply the fiery temper of William the Lion,^{4.} I believe it represents a deliberate effort to introduce English practice as to

(1) Reg. Prior. Sancti Andree, p. 351

(2) Ibid., p. 352.

(3) Ibid., pp. 400-2.

(4) Dowden, Medieval Church in Scotland, p. 211.

advowsons, and therefore marks an acute stage in the conflict between Church and State. (For the papal use of judges-delegate the fullest account is in Morey, Bartholomew of Exeter.¹ Additional evidence will be found in Papal Decretals relating to the Diocese of Lincoln in the Twelfth Century which has been edited by Dr. Walther Holtzmann, with an introduction by Canon E.W. Kemp; The Letters of John of Salisbury, Vol. I, with an introduction by C.N.L. Brooke; and an article by W. Ullmann, in the Yorkshire Archaeological Journal. I have in preparation a paper for The Scottish Church History Society, on the subject "The Papal Use of Judges-Delegate in the 12th and 13th Centuries,² with special reference to the Church of Scotland.")

- (1) Morey, Bartholomew of Exeter, Bishop and Canonist, pp. 44-78; Papal Decretals relating to the Diocese of Lincoln, Lincoln Record Society, Vol. 47; The Letters of John of Salisbury, Vol. I, Nelson Medieval Classics, pp. xxxiff; English Historical Review, lvi, (1941), pp. 172ff; Walter Ullmann, in Yorkshire Archaeological Journal, xxxvii (1948-51), pp. 456.
- (2) This is a subject which has only recently received from our historians the attention it deserves.

The rapid development of appellate jurisdiction was the major contribution of the 12th century to the power and influence of the Holy See. By 1200 a flood of disputes, grave and trivial, were passing to the Curia which in some cases had become a court of first instance. As it was often impossible to establish the facts of an intricate case far from the scene of the crisis, the Papacy developed the system of judges-delegate—of referring the case to specially appointed men in the country in question. The judges-delegate decided the issue of fact, while the pope reserved to himself the decision in law.

The claim of the church to jurisdiction in cases of patronage seems to have been allowed by King Alexander II, but in the minority of his son, the nobles adopted an oppressive attitude to the church, and claimed for the king that when action was taken in cases of patronage, recourse must be had to the secular court.

Many of the cases had reference to rights over parish churches, a fruitful field of litigation, especially at a time when the legal relations of church and manor were so uncertain, and there was a great transfer of churches and rights of patronage from lay patrons to the religious orders.

- (I) It was not only that they sought to change the practice as to rights of patronage. Grants made to the church "in perpetuam eleemosynam" in which the grantors retained nothing except "exercitum ad defensionem regni et commune auxilium" were treated as if they were ordinary feus in the hands of laymen. Even tithes were claimed as within the temporal sphere, and churchmen were deprived of their "privilegium fori" in real and to a large extent also in personal actions. Cf. *Registrum Episcopatus Moraviensis*, pp. 334ff.

A Parliament at Edinburgh in 1250 decreed that the church should continue in the peaceful possession of all the rights and immunities which it enjoyed in the time of the late king; but the decree was not committed to writing, and the bishops in a remonstrance to the young king complained that new and unheard of usurpations of church properties were sanctioned by his counsellors.

Still more earnest complaints were sent to Rome, and it was in these circumstances that Pope Innocent IV issued his mandate, *De Gravaminibus Ecclesie Scotice emendandis*. (Some of these grievances, it would seem, the Scottish bishops sought to redress by their own statutes. See nos. 33, 41, 47, 50, 55.)

On 31st May 1251, Pope Innocent IV issued a commission to the Bishops of Lincoln, Worcester and Lichfield to deal severely with the offenders who were churchmen. The following extract from the lengthy papal rescript is instructive. "Mandatum Innocentii Pape de gravaminibus ecclesie Scoticane emendandis. Innocentius Episcopus etc. venerabilibus fratribus Lyncolniensi Wygorniensi et Lycchefeldensi Episcopis salutem et apostolicam benedictionem. Clamat in auribus nostris ecclesia Scoticana et adversus eos qui fidelem Scocie videntur regere populum et heredem illius Christianissimi Regis adhuc impuberem optinere sue potestati subjectum....

"Porro de jure patronatus quod sit spiritualibus causis annexum nemo fere non novit. sed licet per hoc quod explorati sit juris illud ad judicium ecclesiastici examinis pertinere de generali et juri consentanea regni predicti consuetudine sit optentum. id tamen ibidem novis conviciis usurpatur a laycis. et ut super hoc cum de illo agendum fuerit ad forinsecum recurratur judicium jam ex parte Regia est publice proclamatum....."

(I) The Bishop of Lincoln was the scholarly Robert Grosseteste who was at this time holding his own with equal energy against the king of England and the pope.

"Verum ne parum illis esset per hoc in Scoticanam ecclesia, deliquisse, peccatum adjecerunt non satis veniale in Romanum. dum plenitudinem potestatis qua Deus Sedem Apostolicam predidit, quantum in ipsis est, vacuare, conantes, clericos literarum nostrarum impetratores et iudices delegatos a nobis ab agendo vel cognoscendo commissa tractare negotia, prolati Regiis prohibitionibus et interminationibus, non permittunt, in ejusdem Sedis intolerabilem injuriam et contemptum....."

The conflict of jurisdiction in patronage cases appears again in 1273, when we find Pope Gregory X sending a sharp letter to Alexander III complaining that he compelled causes relating to the patronage of churches to be litigated in the secular courts.^{2.}

Grosseteste held very strong views on the subject of patronage. (Cf. Roberti Grosseteste Epistolae, Rolls Series; Epistle 72, p. 228) He was also very conscious of the need to defend the church against aggression from the civil authorities. See Robert Grosseteste, Scholar and Bishop, edited Callus, (Oxford 1955), p. 157-158.

- (1) Statuta Ecclesiae Scoticanae, edited Joseph Robertson, (The Bannatyne Club, 1866), pp. 242, 244, 245.
- (2) Liber Ecclesie de Scon., No. 120.

The evidence in "Regiam Majestatem" is not consistent, but Book III, chapter 33 is said to be of dubious authenticity as part of the original. It would appear to be an elaborate mosaic of extracts from different parts of Glanvill dealing with the possessory assize, *De ultima praesentatione*. To give two short extracts from a somewhat lengthy chapter, "*Sequitur de recognitione de ultimis personarum praesentationibus. Cum itaque contingit ecclesiam aliquam vacare et fuerit inde in curia controversia super praesentatione, ab alterutro litigantium illud in curia postulante poterit illa per recognitionem de ultima praesentatione decidi.....*"

- (I) The origin, nature and date of *Regiam Majestatem* have long been the subject of learned controversy. For the views held on the high authority of Cosmo Innes, see A.P.S.I, 42ff. The most recent examination of the evidence is in *Regiam Majestatem*, The Stair Society, Vol. II (1948), edited by the late T.M. Cooper, Lord Justice-General, where the conclusion is reached that *Regiam Majestatem* is an incompletely edited manual on Scots-Norman Law, compiled by an unknown ecclesiastic about the time of Alexander II and depicting more or less accurately the phase of development which had been reached about 1230, that is before Scots-Norman Law had begun to diverge notably from Anglo-Norman Law.

This conclusion is confirmed in the chapter on Scots-Norman Law which Lord Cooper contributed to *Scottish Legal History*, Stair Society Volume 20 (1958), pp. 3-17, shortly before his death.

"Procedente vero recognitione, seu utroque litigantium praesente seu altero praesente et altero absente, si sibi vel alicui praedecessorum suorum fuerit per assisam adjudicata ultima praesentatio, eo ipso sasinam advocationis intelligitur dirationasse. Ita, quod ad praesentationem ipsius prima persona in ecclesia vacante, per episcopum loci instituetur (dummodo persona fuerit idonea), quae ecclesiam per hujusmodi praesentationem adeptam tota vita sua obtinebit, quicquid de jure advocationis contingat. Poterit tamen is contra quem judicatum est de ultima praesentatione per recognitionem versus alium vel suos heredes super jure advocationis placitare....."

The possibilities are (1) that Regiam Majestatem was written by a contemporary of Alexander II; (2) that it was written two or three generations later as an account of the law as it had been and not of the law as it was; and (3) that it was a forgery of the late 14th century intended to be passed off as the supposed law of the time of David I. As compared with the first, the second and third appear to Lord Cooper to be violent and unnecessary suppositions.

(1) Regiam Majestatem, Book III, chapter 33.

(2) Circumstances were constantly arising appropriate for the invocation of this remedy and that described in the following chapter (Reg. Maj., III, 34); and yet not a single reference has been noted from independent sources to either of these processes, nor to the writ of prohibition by which the civil power withdrew a cause from the Courts Christian. It would appear that these remedies which in England played no inconsiderable part in securing the triumph of royal justice as against the church were almost unknown in contemporary Scotland.

There is no proof from independent sources that in Scotland the civil courts exercised in the thirteenth and fourteenth centuries the jurisdiction in relation to patronage rights which is described in this chapter. On the contrary all the indications suggest that such questions were determined in the church courts, usually by judges-delegate, and that is what is stated in Regiam Majestatem, I, 2.

In Regiam Majestatem I, 2 the writer assigns to the church courts actions relating to "dos" and wills, and "so also advocations of kirks and rights of patronage." "Placitum de dotibus et de testamentis ad forum ecclesiasticum pertinet, ac etiam placitum de advocationibus ecclesiarum et etiam jus patronatus pertinet ad forum ecclesiasticum. Sed caveat sibi patronus laicus quod vacante ecclesia vel vicaria praesentet personam idoneam, in literatura sufficientem, vita laudabili, et sane morigeratam, et quod praesentet illam infra quatuor menses ne dilatio ulterior suae praesentationis praejudicare sibi valeat."¹ (If they fail to make a presentation, the writer continues, the bishop of the diocese is entitled by canon law to make it for them, that is, to make provision for the vacant benefice; and this may give rise to much controversy)

(1) Stair Society, Vol. II, pp. 60-61, pp. 238-9; Dowden, Medieval Church, pp. 211, 285; Mylne, Canon Law, p. xv; Cooper, Select Scottish Cases, p. xxxiv.

As we have indicated above, Registrum Episcopatus Glasguensis, No. 58 reads, "Quod de patronatu inter se aliqui contendes in presentia episcopi sui litem contestentur et ipsius⁽¹⁾ iudicio lis terminetur." " ¹.

The question of jurisdiction in cases of patronage is referred to again in Copiale Prioratus Sancti-Andree², where Professor J.H. Baxter describing ecclesiastical affairs in Scotland in the years succeeding the Council of Constance, says, "As in France there was quarrelling about the royal right to administer the temporalities of bishoprics during vacancies, and as in England there was a strong desire to bring all suits affecting presentation to benefices within the cognisance of temporal courts..." There is no documentation for this passage; but when I approached Dr. Baxter in the matter, he recalled almost at once that in making the statement about cases of advowsons, he had had in mind the sermon of William Croyser, archdeacon of Teviotdale, before the Council of Basel in May, 1434.³

For the jus devolutum, see Decretals of Gregory IX, (cited thus, X) 3, 8, c. 2; also, X, 3, 38, cc. 3, 12 and 27. Also the Decretals of Boniface VIII, (cited thus, VI); 3, 19, 1.

Erskine, An Institute of the Law of Scotland, I, 124, followed by Cooper, cites only the canonist source of the rule in X 3, 38, 27.

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On the basis of the canons cited above, the majority of the canonists ultimately came to adopt the view that the period of four months allowed for presentation applied to lay patronages, while the longer period of six months applied to ecclesiastical patronages. This distinction and its application were formally recognised, and authoritatively fixed by Pope Boniface VIII. (Sexti Decret., Lib. III, Tit. XIX, cap. un.)

Erskine on "Jus devolutum" reads, "A laic patron, who neglected to present a fit person to the bishop within four months after the vacancy might have come to his knowledge, forfeited, by the canon law, his right of presenting for that turn (Decretal., L. 3, t. 38, c. 27) which was transferred "jure devolutionis" to the bishop in the first place, then to the archbishop and so upward till it came to the pope; and this limitation of four months obtained also by our ancient law; Reg. Maj., l. I, c. 2. A church patron might have presented by the canon law within six months. By the later law of Scotland, six months have been indulged to lay patrons for presenting; which term is computed, as in the canon law, not from the vacancy, but from the patron's probable knowledge of it, if it happened through the incumbent's death, 1567, c. 7; and if through his deprivation, from the time of showing the extracted sentence of deprivation to the patron; 1592, c. II 7."

- (1) Reg. Epis. Glas., no 58, one of a series of papal bulls to Bishop Jocelin of Glasgow (1175-99), answering his questions on canon law.
- (2) Copiale Prioratus Sancti Andree, p. xlvi.
- (3) For the sermon of William Croyser before the Council of Basel, see Copiale..., pp. 279-284.

CHURCH PATRONAGE IN SCOTLAND IN THE 12th and 13th CENTURIES

V

The papal claim to over-ride the rights of patrons

From the middle of the thirteenth century onwards, patrons in Scotland as elsewhere were much troubled by papal claims to over-ride the rights of patrons, and this question of papal patronage we propose to examine more fully in the next chapter.

For papal provisions generally, G. Barraclough, *Papal Provisions*¹ is a valuable corrective to a wholesale condemnation of provisions; but as the late Professor Hamilton Thompson remarked, it is going very far to praise the papal system of procedure as "a great achievement, and probably an achievement which only a jurisprudence exercised with a consciousness of the nearness of God and of eternity could have produced."²

The subject needs re-examination and restatement. Papal provision was not simply an abuse, but was part of the growing centralisation of the church. It was centralisation

(1) G. Barraclough, *Papal Provisions* (Oxford, 1935), p. 81

(2) A. Hamilton Thompson, *The English Clergy*, p. 13, n. 1.

as applied to patronage, just as appeals to Rome, the use of judges-delegate and so forth represented centralisation applied to the judicial system. The application to bishoprics of the centralising tendencies of the thirteenth century was the result rather than the cause of papal provision to the lesser benefices.

(I) Cf. W.A. Pantin, *The English Church in the Fourteenth Century*, p.47; A. Deeley, *Papal Provision and Rights of Royal Patronage*, in *E.H.R.*, xliii (1928), 497ff.; W.E. Lunt, *Papal Revenues in the Middle Ages*. (New York, 1924), and *Financial Relations of the Papacy* (Cambridge, Mass., 1939).

A.I. Cameron, *The Apostolic Camera and Scottish Benefices*. (1934); *Scottish Supplications to Rome*, *Scottish History Society*, Third Series, Vols. 23 and 48.

G. Mollat, *La Collation des benefices ecclesiastiques sous les Papes d'Avignon*, 1921.

PAPAL PROVISIONS

In this last chapter I am concerned with what was undoubtedly the most important aspect of church patronage in the later Middle Ages, namely papal intervention in the disposal of benefices, or more technically papal provisions. The pope was late in entering the field of patronage, but he was soon the foremost patron of them all.

Opinion has reacted rather sharply against the older view which regarded papal provisions simply as an abuse, like pluralism or non-residence.¹ It was one aspect of the centralisation of church government which initiated in the twelfth and thirteenth centuries, had been continued into the later medieval period; and ran parallel to the growth of centralised power in the national states. It was centralisation applied to patronage, just as appeals to Rome, the use of judges-delegate and so forth represented centralisation as applied to the judicial system.² To what extent and for what ends did the papacy interfere with the ordinary processes of patronage as exercised by the Crown, by lay magnates, by bishops and abbots and the local lairds?

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- (1) G. Barraclough, *Papal Provisions* (Oxford 1935).
 (2) W. A. Pantin, *The English Church in the Fourteenth Century*, (Cambridge, 1955); also D. Knowles, *Religious Life and Organisation, in Medieval England*, ed. A. L. Poole (1958), 421ff.

There need be no doubt about the importance of this subject. The question of papal provisions was not a side issue, but was one of the major issues in the relation between Church and State in the later medieval period; and papal patronage with papal finance was at the heart of the opposition that culminated in Protestantism. During the weeks immediately following the coronation of Clement VI (1342), the Papal Curia at Avignon disposed of between eighty and a hundred thousand benefices.¹ Circumstances in that year were no doubt unusual, owing to the attitude of Benedict XII, but there was nothing exceptional about the practice of provisions. In every country of Europe benefices were affected, and in every year benefices were affected in thousands, and it may be even in tens of thousands. This, as Professor G. Barraclough has pointed out, is the explanation of the insistence of medieval critics in regard to what seems to us to be merely a technical matter of ecclesiastical administration. If the question of papal provision were merely that, then it would have little historical significance today. But in actual fact, the very vastness of the system made it the most practical, unavoidable issue in church politics during the later middle ages.²

(1) U. Berliere, *Suppliques de* Innocent VI, xxii.

(2) G. Barraclough, *op. cit.*, p. viii.

The development of the system may be studied in the works of G. Mollat.¹ The practice of papal provision to a benefice had quite a simple origin, and was simple in itself. It began in the twelfth century, and in form was a request to an ecclesiastic to provide a clerk whom the pope wished to help or to whom he wished to show favour with a benefice. It began with a request, but where Rome was concerned, requests had a way of hardening into commands. John of Salisbury writing to the Bishop of Worcester (1158-60) concerning a request of the pope for a benefice, says....."....voluntas domini papae pleniori benignitate interpretanda erat. Vulgo dici solet et acceptum fideliter verum est, quia summi pontificis voluntas decretum est.....Novit discretio vestra quid eum sequatur, qui scit et non facit domini voluntatem."² When the pope wrote "volumus et mandamus",³ he meant to be obeyed. In 1175 the abbey of St Edmunds through their messenger at Rome asked

Peter of Herenthals estimated the number of impetrants between 19th May and 25th June, 1342 at one hundred thousands. (Baluze-Mollat, *Vitae paparum Avenionensium*, I, 298). Some 6000 candidates from the dioceses of Mainz and Koln alone were examined in the curia. Cf. U. Berliere, *Suppliques de Clement VI*, 579.

- (1) Mgr. Guillaume Mollat, *La Collation des benefices ecclesiastiques*, in *Lettres Communes de Jean XXII*; also, *Les graces expectatives du XII au XIV siecle* (Rev. d'hist. eccles. xlii (1947), pp. 81-113).
- (2) *The Letters of John of Salisbury*, ed. W. J. Hillor, and H. E. Butler, Letter 98, p. 152. (1955).

to be spared the necessity of finding benefices for certain persons on whose behalf the pope had written: but although, as Pope Alexander III replied, he "wished and desired to love and cherish the abbey and convent as his devoted and favourite children and to spare them burdens", yet he would not take "no" for an answer.^{1.}

No doubt the court of Rome was of such importance that many patrons of benefices were glad to use their patronage to purchase friends at court, and would be quite prepared to accede to papal requests for benefices.^{2.} According to Gerald of Wales, English bishops regarded expenditure on cardinals and their nephews as a necessary part of their annual budget.^{3.} The king felt the same need. But when all allowance is made for patrons who had an eye for business, the fact remains that their freedom of action was becoming restricted by the pope's intervention.^{4.}

(4) H. Baier, *Papstliche Provisionen* (Munster 1911), pp. 204-211.

(1) *Papsturkunden in England*, ed. W. Holtzmann, III, p. 350

(2) See Mollat, *Les Papes d'Avignon*, pp. 475-6

(3) *Opera* II, 332. Cf. also the celebrated dictum which is assigned to Alexander III by Gerald of Wales, *Opera*, II, p. 304. "The Lord deprived bishops of sons, but the devil gave them nephews."

(4) Cheney, *op. cit.*, p. 81.

By the beginning of the thirteenth century, the papal practice of recommending clerks for benefices had been transformed into a right to ~~confer~~ confer benefices directly, or to order conferment by others on apostolic authority.¹ The following important example quoted from F.M.Powicke marks the transition.² In 1198 at the request of Pope Innocent III, Archbishop Geoffrey of York collated a master in the Parisian schools, Peter of Corbeil, to the archdeaconry of York, and a prebend or revenues attached to the office. Peter was a distinguished scholar who later became Archbishop of Sens, but he had no connection with York, and did not propose to live there. When the Dean and Canons of York refused to admit him, Innocent III wrote three letters. Two of these were mandates, one to the Dean and Canons, the other to the Bishop of Ely. If the Dean and Canons would not admit Master Peter, the Bishop was to assign him the prebend and archdeaconry, i.e. he was to act over their heads. The third letter was a request to King Richard, exhorting him to see that Peter got peaceful possession. Whether this was or was not a papal provision in the later sense

(1) Cf. Mollat, *op cit.*; Stubbs, *Constit. Hist.*, 5th editn, iii, 320; Baier, *op.*, *cit.*, p.16.

(2) F.M.Powicke, *Henry III and the Lord Edward*, I, 275; C.R. Cheney, *op.*, *cit.*, p.80.

of the term, it shows, as Powicke remarks, how the system developed. The popes issued mandates of provision to proteges or suppliants, and when they did so, appointed executors to see that the mandates were carried out. In the time of Innocent III the appointment of the executor seems to have been the last step in compulsion, after the request, the mandate and the precept had been issued in turn. The best study of the executors in canonical theory is G. Barraclough, *The Executors of Papal Provisions in the Canonical Theory of the Thirteenth and Fourteenth Centuries*. Barraclough has pointed out that pressure on Innocent IV led to greater precision in the form of letters, more insistence upon the qualifications of the petitioner and distinction between definite provisions and expectant rights.

The theoretical basis of this development, that is the development of papal provisions, is to be found in current conceptions of papal power, that all church property was at the disposal of the papacy. In *Foundations of the Conciliar Theory*², B. Tierney has shown that in earlier discuss-

(1) *Acta congressus juridici internationalis Romae, Novembris 1934*, iii, 109-53.

(2) B. Tierney, *Conciliar Theory*, pp. 118-119; 140ff; 165ff.

ions of the ownership of church property, although there were different definitions of the holder of "dominium", it was generally assumed that "dominium" rested in some sense with the local community, with the "universitas loci" as Goffredus Tranensis put it. Pope Innocent IV enunciated a very influential restatement of the doctrine, suggesting that "dominium" was vested in the whole "aggregatio fidelium", the Body of Christ.² The argument had this implication. If "dominium" rested with the universal church, the "aggregatio fidelium", then for practical purposes all ecclesiastical property could be regarded as at the disposal of the earthly head of the "aggregatio fidelium", Christ's representative, the Pope. In assuming that the church defined as the "corpus Christi" was an entity capable of the quite prosaic function of property ownership, Innocent was apparently regarding it as not only a "corpus mysticum", but as something very like a legal corporation. As in his view the jurisdiction of a corporation

(1) Cited by Guido de Baysio, Rosarium ad C. I2 q. I c. 13.

(2) "Non praelatus sed Christus dominium et possessionem rerum ecclesiae habet... vel ecclesia habet possessionem et proprietatem... id est aggregatio fidelium quae est corpus Christi capitis.

Commentaria ad X. 2, I2, 4. Bernardus Compostellanus argued that, although dominium over ecclesiastical property rested with the whole "congregatio fidelium", the use of such property belonged to the individual local churches.

was concentrated in its head, he could quite consistently present the whole church as a corporation, and at the same time uphold an extreme doctrine of papal monarchy in all affairs of church government.

While the whole tendency of canonistic thought in the middle of the thirteenth century was to emphasise the universal authority of the pope, and to treat the local churches as subordinate members whose unity was produced only by their common adherence to a single head, yet as Tierney observes, it is not altogether paradoxical to treat this development as a stage in the growth of conciliar ideas. In the secular kingdoms, theories of corporate representation could flourish only after a degree of monarchical unity had been attained: so in the ecclesiastical sphere, when the idea of the church as a corporate unity in the more legalistic sense became accepted, there was always a possibility that it might be restated in a form that would lay all the stress on the due participation of the members rather than the unique authority of the head. The doctrine of Innocent IV on church property, for instance, could lead to the theories of John of Paris, as well as those of Giles of Rome.

(I) *Commentaria ad X.I*, 2, 8; with which should be compared the view of Hostiensis, *Lectura ad I*, 2, 8. For Hostiensis, the authority of a corporation resided not only in its head, but in all its members as well.

But in the mid-thirteenth century the "plenitudo potestatis", or the proposition that "omnes ecclesiae et res ecclesiarum sunt in potestate papae" was a commonplace of everyday thought. Robert Grosseteste might be critical of any misuse of provision, but he was very clear about the pope's right. "Scio, et veraciter scio", he wrote in 1238, "domini pape et sancte Romane ecclesie hanc esse potestatem, ut de omnibus beneficiis ecclesiasticis libere possit ordinare."¹ And Pope Clement IV began an important decretal on this subject, "Licet ecclesiarum" (1265), by saying, "Although the full disposal of churches, parsonages, dignities and other ecclesiastical benefices is known to belong to the Roman Pontiff, so that he can not only confer these by right when they are vacant, but can also grant a right to those that shall fall vacant....."².

(2) Tierney, op., cit., pp. 142, 165, 167. John of Paris, De Potestate Regia et Papali (ed. J. Leclercq, Paris 1942, p. 174).

(1) Roberti Grosseteste Epistolae, ed. H. R. Luard, (R.S. 1861), p. 145.

(2) Corpus Juris Canonici; Sext. III, iv, 2. "Licet ecclesiarum, personatum, dignitatum, aliorumque beneficiorum ecclesiasticorum plenaria dispositio ad Romanum noscatur Pontificem pertinere, ita, quod non solum ipsa, quum vacant, potest de jure conferre, verum etiam jus in ipsis tribuere vacaturis:".

Papal provisions might be exercised by virtue of a special reservation, or a general reservation. By a special reservation, the Pope reserved to himself the right to appoint to a particular benefice. By a general reservation, he reserved to himself the right to appoint to a whole class of benefices, or to all the benefices in a particular area.

The first general reservation was decreed by Clement IV in 1265, when he reserved to the papacy the benefices of all who died at the Holy See. From this time onwards new categories¹ of reserved benefices were added by the constitutions of Boniface VIII, Clement V and John XXII, as for example the famous decrees "Ex Debito"³ and "Execrabilis"⁴; and these, after being codified and still further extended by Benedict XII, received confirmation and what appeared to be permanent validity in the Rules of the Papal Chancery during the Schism.

(1) Corp. Jur. Canon.; Sext. III, iv, 2.

(2) For the extension of decrees making a general reservation of certain benefices to the papacy, see Mollat, La Collation.. p. 10 ff.

By the time of John XXII such decrees covered the benefices of all who died at the papal court or within two days' journey of it, those of all cardinals, nuncios, papal chaplains and the chief officials of the curia, and those which were vacated by an act of resignation or exchange made at the Holy See, or vacated by prelates who received consecration or benediction there. For the effect of these decrees in England in the early 14th century and the means adopted to counteract the increasing papal intervention in the collation of benefices, see E.H.R. (1928), 497 ff.

(3) Extrav. Commun. I, 3, 4. (4) Extrav. Johann. XXII, tit. 3, c. un.

Papal provision might take the form of immediate appointment to a benefice already vacant, and this was commonly the case with important offices like bishoprics. But it might also take the form of a promise of a benefice, when it should fall vacant in the future. This was called an "expectative grace", and was the method commonly used in providing to lesser benefices.

In *Apostolic Camera and Scottish Benefices*, Dr. A. Dunlop describes expectative graces as papal grants bestowing prospective provision to certain ecclesiastical benefices in the event of a vacancy, and gives the following example. The presentation of a parish church might pertain to lay or ecclesiastical patrons, or to the ordinary. Or it might be reserved to the disposition of the Apostolic See or another having faculty from the pope. The effect of an expectative grace was to abrogate for that turn the right of the lawful provisor. A clerk might, for instance, obtain an expectative grace of provision to, say, the first canonry and prebend or perpetual vicarage to become void in the collation of the ordinary of the diocese, or of the abbot of a stated monastery

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- (1) See Mgr. G. Mollat, *Les grâces expectatives du xii au xiv siècle*, *Rev. d'hist. ecclesiastique*, xlii (1947), pp. 81-102.
 (2) A. Cameron (Mrs A. Dunlop), *Apostolic Camera and Scottish Benefices*, pp. lix.

or otherwise according to the terms of the grace.

Expectative graces were a fruitful source of litigation, as they cut across the rights of legal patrons and of ordinaries; and undermined the older system of general and special reservation. Edward Lauder, an experienced benefice hunter, resigned a canonry and prebend accepted under an expectative grace "on account of the difficulty which he had in taking up the fruits, because a great number of expectants claimed a right" to the same.

The entry in the Calendar of Supplications reads:
 "Concessio. Item; the said Edward supplicates that formerly the Pope made him a grace, dated 4 Kal. Feb., anno I (29 Jan. 1419), to two canonries with the expectation of prebends in the presentation, collation or disposition of the Bishops and chapters of the Churches of Glasgow and Dunkeld, as is more fully contained, etc., in virtue whereof the canonry and prebend called Glasgow Primo or major were accepted in the name of Edward, and he is said to have obtained possession, or nearly so, taking up some of the fruits. (Then) Edward resigned simply the said canonry and prebend and all right which he had or alleges to have therein in the hands of the Ordinary,

(1) Calendar of Scottish Supplications to Rome, 1423-1428; edited by A. I. Dunlop, and presented by her to the Scottish History Society in memory of her husband; p. xii.

the Bishop of Glasgow, on account of the difficulty which he had in taking up the fruits, because a great number of expectants claimed (vendicarunt) a right to the said canonry and prebend. He therefore supplicates that the Pope, extending the grace, would decree that the apostolic letters and processes should remain valid in every prebend; notwithstanding etc, as above. Fiat ut petitur. O. Rome, St. Peter's, 3 Kal. June, anno 9. 199, 45 (2 pp.)¹.

An earlier entry in the calendar records that Henry Ogilvy, another ambitious pluralist, found an expectative grace granted to him to be of little profit "on account of diverse other graces under a more effective date." He was able to have his letters predated.²

It should also be noted that in the Calendar there is one reference to the reservation of months to papal expectants and to the Ordinaries. The entry which is dated II December, 1427 reads: "Nova Provisio. Lately on the voidance of the parish church of Alberbuchnoch (Arbuthnott), St. Andrews diocese, by the death outwith the Roman Court of

(1) Calendar of Scottish Supplications to Rome, 1423-1428; P. 131.

(2) Ibid. pp. 107-108.

William de Balmyll, last rector, Thomas Archer, priest, St. Andrew diocese, accepted it by virtue of an expectative grace within legitimate time and had himself provided, possession following, and then a certain James Schyrmeour intruded, also by letters of the Pope, and detains it at present unlawfully occupied. But since the said parish church fell void in a month of the Ordinary, and the Ordinary did not collate it, and since, moreover, it is alleged by some that the said church of Alberbuthnoch had devolved to the Apostolic See and is void at present, may the Pope therefore ratify the acceptance, provision and assecution of the same by the above Thomas Archer and the consequences, and provide him anew as far as need be to the said parish church of Alberbuthnoch (30 marks of old sterling) void as above or by the free resignation of the late William de Balmyll in or outwith the Roman Court; notwithstanding the parish church of Tarwett, St. Andrews diocese (£10 of old sterling). Fiat ut petitur. O. Fiat. Rome, S. Apostoli, 3 Id. Dec. anno II. 219, 208. (I pp.)^{1.}

The reservation of months, says Dr. Dunlop, was a development of the system of papal reservations. The Council

(1) Ibid. pp. 178-179.

of Constance declared that six months should belong to papal expectants and six to the Ordinaries, but the practice varied from pope to pope and from one country to another.¹

Mandates creating an expectant right led to another complication. Pensions were sometimes extorted by the papacy in favour of the expectants during their time of waiting, and the pension could be made the occasion for bargaining. A man with a pension preferred to hold on to it rather than to exchange it for a benefice which might involve him in legal proceedings, or was worth less than he was getting. There was no end to the trouble and frustration which the claimants could cause or suffer.²

(1) Dunlop, Cal. Scot. Supplic., op. cit., p. 178, n. 3. For the "reservatio mensium", see also J. H. Baxter, *Copiale Prioratus Sancti andree*, where document 45, p. 89, "is a note of the months in which Ordinaries could present to benefices; * this is the so called "reservatio octo mensium" which had its origin in the reforms proposed by Martin V on Jan. 20, 1418. Ibid, p. 435; also Huebler, *Die constanzer Reformation*, p. 134 and note; J. Sznuro, *Les Origines du droit d'alternative bénéficiale*, Le Roy, 1924."

(2) Powicke, op. cit., pp. 278-279; H. MacKenzie, *The Anti-foreign Movement in England*, in *Haskins Anniversary Essays* (1929), pp. 184-195.

Another device which developed in Scotland in the late fifteenth century was the practice of "resignatio in favorem". Such resignation made in the hand of the pope, enabled the holder to transfer his title and reserve life-rent, so that succession was determined, and on his decease there was no vacancy. To meet this danger which as R.K. Hannay¹ observed, threatened the rights of all patrons, affecting Crown and baronage alike, James IV reverted to the measures which James I had sought to enforce. He reintroduced permanently the system of licence, in order to place every clerical resort to Rome in benefice transactions under royal supervision.²

There was a certain amount of devolution or delegation of the right of papal provision. Thus the bishops might be empowered by the pope to make provisions.

On occasion the pope granted the same right to the king. Thus Pope Julius II granted to James IV of Scotland faculty to exercise on his own account this papal power of nomination to thirty benefices. And the Register of the Privy Seal contains notes of several of the nominations

(1) R.K. Hannay, The Scottish Crown and The Papacy, (Historical Association of Scotland Publications. New Series, No 6) p.10; a masterly survey of this period.
 (2) Acts of the Parliaments of Scotland, II, 237-c, c.2.

made accordingly; some of them to special benefices, others to any benefice within the kingdom, vacant or next to fall vacant, which the grantee should please to accept. J.M. Thomson has pointed out that such grants when made by the pope were apparently taken to apply to livings in ecclesiastical patronage only: it is not clear whether the king's nominations had a wider range, and covered livings in lay patronage also.¹

It should be stressed that the pope did not normally interfere with livings in lay patronage, although in canonical theory they fell within his plenitude of power.²

(1) Mylne, op. cit., p. xxii.

(2) Barraclough, Papal Provisions, p. 43; C.R. Cheney, From Becket to Langton, p. 82.

But cf. Knowles, Religious Life and Organisation, p. 421. "Paradoxically enough, the rights of lay patrons were consistently respected, though there was some friction in England between the courts Christian and the royal courts, both of which claimed the right of decision as to the fact of lay patronage."

Also C.N.L. Brooke, in A History of St. Paul's Cathedral, p. 45, "It has not escaped observation that while the pope denounced the evils of lay patronage, it was the patronage of bishops which he effectively diminished, because that was easier for him to steal."

III.

Thorough-going papalists might argue that the layman's right of patronage was not part of the common law of the church at all;¹ it was a matter of toleration rather than of official recognition, and patrons could not complain if the privilege was revoked. In canon 17 of the Third Lateran Council (1179 A.D.), the word "sustinuit" is used of the practice. "Quoniam in quibusdam locis ecclesiarum fundatores, aut haeredes eorum, potestate in qua eos ecclesia hucusque sustinuit, abutuntur:....."²

(1) This would appear to be the view of the scholarly Bishop of Lincoln, R. Grosseteste; in a lengthy discussion of jurisdiction in matters of patronage, he says: "licet contra justitiam habeantur laici ecclesiarum patroni." Ep. 72 (p.228)

(2) C.J. Hefele and H. Leclercq, *Histoire des Conciles*, V(2), p. 1100; also *Decretals* III, 38, 3. (Friedburg, II, p. 610).

The significance of the word is referred to in the tract, *Non ponant laici*, on the famous bull, *Clericis laicos*, printed in R. Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII*, p. 483.

Cf. also Goffredi de Trano, *Summa*, p. 151.

"Item nota quod jus patronatus de gratia dicitur obtineri Et hoc ideo, quia cum jus patronatus sit spirituale vel spirituali annexum, ... laici de rigore juris non debeant ecclesiastica et maxime spiritualia tractare negotia....."

The lay patron read history differently. The local church was his, as his fathers had built and endowed it. The canonical limitations upon his rights as patron were the novelty, whereas in the eyes of the ecclesiastical reformer and canonist the manorial church was a bit of ecclesiastical property, and was inviolable.

".....et cum ecclesiae cum suis dotibus ad ordinationes episcoporum pertineant.....ex permissione juris procedit, ut hoc jus cadat in laicum et actus praesentandi qui mere est spiritualis. Haec tamen permissio sive gratia conversa est in jus commune et ob hoc dicitur jus patronatus annexum spirituali, cum tamen sit spirituale quia cum laicus nullum spirituale valeat possidere, possidet tamen vel quasi possidet jus patronatus."

(I) Robert Grosseteste, ed. D. A. Callus, (1955), p. 157; Powicke, op. cit., pp. 261, 285; M. Cheney in English Historical Review, lvi, 190ff.

In fact, however, the pope respected lay patronage, and did not in this connection put his prerogative powers into exercise. For a time, indeed, perhaps until the pontificate of Innocent IV, there seems to have been some ambiguity in practice. But it was not long before it became established that lay patronage should not be regarded as affected, unless the papal rescript contained a specific clause to that effect, "non obstante si predicta ecclesia ad praesentationem laici pertineret." Such clauses were in fact very uncommon.

Schulte's claim that in Germany alone was lay patronage exempt from papal intervention must be qualified.² In England, early in Edward II's reign, the invalidity of papal collations and reservations relating to benefices in lay patronage was regarded as a rule of English law, although³

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- (1) Barraclough, op. cit., p. 43; examples of the unusual clause are to be found in Reg. Vat. 29 (Urbani IV, a. 3), fo. 277, n. 1447 (Guiraud, n. 2398); Reg. Vat. 44 (Nich. IV, a. 1), fo. 27, n. 110 (Langlois, n. 211).
- (2) Schulte, Kirchenrecht II, 327 n. 3; but cf. for France, Haller, Papstt. u. Kirchenreform, 36 n. 2.; and for England and Scotland see text and footnotes.
- (3) Year Book, 3 & 4 Ed. II (Selden Society), p. 171.

it was not denied that the pope could confer benefices in ecclesiastical patronage. As A. Deeley remarks, "Though the decrees of general reservations make no exception in their favour, in practice the pope respected the custom which declared such benefices to be immune. The bishops instituted without delay to benefices vacated by pluralists if they were in lay patronage, and there was no papal provision to such, though they were included in the lists sent in to the pope."¹

For Scotland, Bishop Dowden states that he does not remember any instance of papal interference with lay patronage.² But J.M. Thomson commenting on this, points out that by the established laws of the church there were cases in which the next presentation belonged to the pope, whoever the patron might be; for example, if the incumbent died at the Holy See, or within two days' journey thereof, if he vacated his benefice by accepting promotion from the

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- (1) A. Deeley, Papal Provision and Royal Rights of Patronage in the early 14th century, in English Historical Review, (1928), pp. 505-6; also F.W. Maitland, Roman Canon Law, p. 67; E.B. Graves, in Anniversary Essays of C.H. Haskins (1929);
 (2) J. Dowden, Medieval Church in Scotland, p. 108.

pope, if he resigned into the hands of the pope or of a papal delegate. "In all such cases where the Crown was patron, it would seem that by the concordat the pope abdicated his rights of interference on whatever ground. In the case where the patronage belonged to a subject, it is evident that Parliament and the law courts maintained the patron's right very vigorously. But where the Lords of Council deal with the matter, we find that they are backing up the decision of a church court. That nominations were unpopular with the clergy as with others and that the ecclesiastical judges would favour the lay patron where they could may be taken for granted. But the law which they had to administer was the common law of the church; there is, I think, no evidence that there was any recognised custom of Scotland derogating from the common law in this matter."

(I) Mylne, Canon Law, xxiii-iv; also Acta Dominorum Concilii et Sessionis 1532-3, Stair Society, vol. I4, p. 21 n. "Laic patronage, including the "jus praesentationis" was commonly enjoyed by a layman in respect of his having himself built and endowed the church or his predecessors having done so. Where there was lay patronage, the papal authorities did not usually intervene with nominations in vacancies, but if they did, patrons often exercised their wits to find grounds for disappointing those who came armed with such provisions."

But whether or not there was direct interference with livings in lay patronage, papal provisions hit laymen indirectly as patrons of religious houses and churches through the loss of custody rights.¹ And papal provisions clashed with the king's right to exercise episcopal patronage during the vacancy of a see which was a source of complicated strife in England and France, as well as in Scotland. There was the further consideration that as sees founded and endowed by royal munificence were in some sense Crown property, the king had a right to prevent their livings being monopolised. Here we have a view of church property diametrically opposed to that of Innocent IV. The story of the tension between the two forms a good part of church history.

(1) S. Wood, *English Monasteries and their Patrons in the 13th Century*, pp. 152ff; for the rights of patrons, see also H. M. Colvin, *The White Canons*, pp. 95, 163, 304-5.

A serious charge brought against the Curia is that instead of providing for the central officials from the revenues of the central administration, it granted them benefices in distant churches, simply as benefices, with little or no regard for the "officium" with a view to which the "beneficium" had been established. To Pope Honorius III this appeared to be a legitimate use of church patronage, as is seen in the terms of the letter which he wrote to Archbishop Gray of York in 1220. "Since those who faithfully serve the Apostolic See, as the head of the universal Church, are held to give useful service as it were to all the members, it is right that they should be honoured with suitable benefices; lest otherwise, if they had to serve at their own cost and were defrauded of special revenues, they might be slower to serve. Whence it is the practice that clerks who reside at the Apostolic See (not without many labours and expenses), have received for the time being ecclesiastical benefices in England and other parts of the world; and these not infrequently have striven in their time to serve those from whom they have received their benefices so efficaciously, that it has been as much to the advantage of those who gave the benefices as of those who received them." The same point of view is expressed in a document of

about 1352 which speaks of the benefices of the cardinals who "being employed about Us (the pope) in the service of the Universal Church, procure the advantage of their benefices no less than if they personally resided in them".^{1.}

The pope was reduced to the indirect use of ecclesiastical endowments to support the central administration, because there seemed no other way out. The more honest and realistic plan of a direct income-tax levied on the whole church to support the Papal Curia, though repeatedly suggested,^{2.} came to nothing.

(1) Durham Cathedral Muniments, Register N, fo 29ff.

(2) The Emperor Henry VI put forward a scheme for the endowment of Pope and cardinals with fixed incomes to be drawn from prebends in cathedral and lesser churches. The suggestion was revived by Honorius III, and he added a demand for allocations from episcopal and monastic revenues and from each collegiate church. The legate Romanus laid the request before a council of French clergy at Bourges, the papal sub-deacon brought it to England. At Bourges proctors of the chapters claimed to be heard. They quoted the famous phrase "quod tangit omnes". Their protest was soon known in England. Archbishop Langton acted upon it. He summoned a council to which all the ecclesiastical corporations and persons mentioned in the papal letter were asked to send representatives, and in the meantime he got the pope to recall his agent. The English council refused to accede to the pope's request, unless the whole church acceded.

For the schemes put forward by the Emperor Henry VI and in 1225 by Honorius III, see F.M. Powicke, Stephen Langton (Oxford 1928), pp. 83, 158.

While the papacy had some justification for acting as it did, its failure to insist on the coordination of "beneficium" and "officium" was at the root of most of the other ills which arose from the curial administration. It was also the reason why the papacy could never offer determined opposition to such abuses as pluralism and non-residence which sprang from the same materialistic conception of the ecclesiastical office as dominated the Curia, although they derived their strength from the local circumstances of the provincial churches. This materialistic conception consisted broadly speaking in an identification of the benefice from the legal point of view with other non-ecclesiastical types of property, as an object of private rights rather than of public interests. This had indeed become the accepted view of the canon lawyers.

The canonist Johannes Andreae put forward another scheme in the Council of Vienne (1311). Cf. J. Haller, *Papsttum und Kirchenreform*, (1903), p. 54.

- (I) Gross, *Das Recht an der Pfrunde*. Graz, 1887, p. 228; Barraclough, *The Constitution "Execrabilis" of Alexander IV*, *English Historical Review*, (1934), pp. 193-212.

Also D. Knowles, *The Religious Orders*, II, p. 288.

"The conception of the ecclesiastical benefice as primarily a pecuniary asset, a piece of real property, susceptible of most of the transactions associated with other forms of property and legally recognised as having this quality has now practically vanished from the world.... In the Middle Ages, on the other hand, it was taken for granted by all parties at all times that a parochial cure of souls was a benefice, a piece of property...."

The effects of the medieval legal attitude towards ecclesiastical benefices are well illustrated by the practice of surrogation which permitted the substitution of a new litigant in the place of the deceased, if one party to a "causa beneficalis" died "lite pendente". Although the popes in their chancery regulations and extravagants made every endeavour to prevent the surrogation of claimants lacking a colourable title, their efforts to check the abuse of the practice failed. And so it was that in trying to guard against possible prejudice to one party or the other, the popes and the lawyers who fashioned canonical procedure provided a weapon for those who were prepared to grasp at every chance of personal advantage in a spirit of chicanery and barratry.

"The canon law, like the common law of England, regarded the church as so much material property; it could be divided, and all or any of it might be devoted to purposes outside the parish, so long as somebody was found to take on the cure of souls..." Cheney, Becket to Langton, p. I23. Quoted more full above.

Also for the medieval legal attitude to a church, see the most interesting statement made by a 14th century pluralist, Roger Oterry, LL.B, priest:

".....Sitque sacris canonibus cautum quod persona bona et industris et literata posset melius et sciret regere duas ecclesias vel decem quam alius unam et altari servire intelligitur tam qui residet quam qui non residet dummodo bene vivat et bene expendat quod inde percipit." Bn. of Hereford (fo.26).

In Scottish Supplications to Rome (1418-1422), Dr.A. I. Dunlop calls attention to the effects of this practice of surrogation ("subrogatio"). Eager and needy aspirants after ecclesiastical livings were too often looking for such opportunities as surrogation offered. They saw, for example, that the constitution "Execrabilis" which was aimed at pluralities afforded them possibilities of surrogating themselves in benefices canonically void by the infringement of this rule. Thus John de Keremor, an unbeneficed priest, forty-four years of age, petitioned that "seeing he has through no fault of his own been frustrated of all benefices hitherto void in Curia, the Pope would give mandate to the Auditor to surrogate him in and to the right, if any" which Michael de Ouchtre had in the deanery of Dunblane at the time of his promotion to Sodor. It would appear that he was too precipitate in his eagerness, and that he had to have resort to a "Reformatio" because "all kinds of avoidance were not expressed" in his original petition, while further to strengthen his position, he obtained the signature five days later of a grace "Si Neutri

(1) Scottish Supplications to Rome (1418-1422), pp. xxii-xxiii, pp. 298-299; for the signature of both a "Si Neutri" and a "Surrogatio", pp. 291, 293.

The constitution "Execrabilis" was an ordinance of John XXII in 1317, to the effect that if a beneficed priest obtained a second benefice with cure, he must resign

The widespread extension of papal patronage met with violent opposition throughout Europe. From all sides came criticism of the disastrous consequences resulting from the direct nomination to benefices by the Holy See;¹ the absence from their benefices of those who "have never seen the crucifix of the churches of which they eat the bread of sorrow"; the exodus of capital from the national territories, the decay of piety among the people, the decrease of divine worship.... These grievances were uttered in England at the Carlisle Parliament in 1307, and succeeding parliaments repeated the complaints.² In France they are specified in almost the same terms in the writings of Bishops Guillaume Durant and Guillaume Le Maire.³ Edward III was bold enough to remind Clement VI that the "successor of the Apostles was commissioned to lead the Lord's sheep to the pasture, not to fleece them."⁴

the first within a month after obtaining peaceful possession of the second, unless he had dispensation to hold two incompatibles. Cf. S. Schmitz-Kallenberg, *Practica Cancellariae Apostolicae Saeculi xv exeuntis*, p. 8.

(1) G. Mollat, *La collation*...; also E.H.R. 43, pp. 497ff; also C.M.H. VII, pp. 270ff.

(2) Rot. Parl. I, 219; and Haller, *Papsttum und Kirchenreform*, pp. 544-9.

(3) C. Port, *Mélanges historiques* (Paris, 1877), II, 481-2.

Guillaume Le Maire complains that promising clerks, finding their promotion in the church blocked by papal provisions,

Opposition was not directed merely against the extended scope of patronage. It was the ability of the Curia to turn the administration of patronage through provisions and reservations into a money-making concern that evoked the most violent criticism. The development of taxes upon consistorial and non-consistorial benefices, servitia and annates respectively, and the need to satisfy the papal merchants before the bulls of provision were released by them to the impetrants, formed a cause of much dissatisfaction, though the money was paid right enough.

It was against these closely-linked systems of patronage and finance, together with the attendant evils of pluralism and non-residence, the conferment of prebends upon foreigners, the unsuitability of many provisors and the evils of the system of expectatives that, as Haller has shown, the attacks of the reformers were concentrated throughout the fourteenth century.

in desperation take to marriage and a secular career, and take service in secular courts and the councils of princes; and these disappointed men become the most bitter enemies and persecutors of the church.

(4) Rymer, *Foedera*, Vol., II, pt, II, p. 1233. (London, 1830).

(1) Haller, *op. cit.*

Yet criticism was too often one-sided and interested. For example, the Statutes of Provisors and Praemunire in England simply transferred so much ecclesiastical patronage to the lay power.¹ And much the same can be said of the legislation of the Scottish Parliament in the fifteenth century. In the struggle which developed in this country between the Scottish Crown and the Papacy over church patronage, religious and political factors were inextricably interwoven. See the important papers by R.K.Hannay, The Scottish Crown and The Papacy; James I, Bishop Cameron and The Papacy; and the other works to which reference is made in the notes.² There is a most admirable summary of the legislation in the second volume of, A Source Book of Scottish History; in chapter VI which is entitled, The Struggle against Papal Control of Appointments.

(1) For the text of these statutes and their reissues, see Statutes of the Realm, I, 316, 329; II 69, 73, 84; E.C.Lodge and G.A.Thornton, English Constitutional Documents, 1307-1485 (Cambridge 1935), 300, 303, 310-1.

Cf. also F.W.Maitland, Roman Canon Law, 67-71; E.B.Graves, in Anniversary Essays of C.H.Haskins; W.T.Waugh, in E.H.R., vol. 37, pp. 173.

From one point of view the Statutes of Provisors and Praemunire represent a most important survival of traditional feudal rights and the principle of the Eigenkirche, the proprietary church, ideas which were still very much alive in the 14th century.

In conclusion: it has been said that the system of papal patronage was a great opportunity lost.

It might have been used as an instrument of reform by promoting men of zeal and ability who could not have relied on local preferment. If in Scotland, as elsewhere, it largely failed of its object, we must own that among the reasons for this must be included the fact that it was worked largely in subservience to the secular authorities.

It was not so much that the church of the later middle ages was too intransigent and exorbitant, but that it was too ready to compromise.

"Nobody wants you in these latter days
To prop the church by breaking your backbone,
As the necessary way was once, we know,
When Diocletian flourished and his like;
That building of the buttress-work was done
By martyrs and confessors: let it bide.

Perhaps it seemed to some that the process of uneasy accommodation could go on for ever; but forces were at work which were to usher in a new day.

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