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Ecclesiastical Dilapidations.

By J. S. BLAKE REED.

THERE is, in some respects, an analogy discoverable between the holding that a parochial incumbent enjoys in respect of the freehold which vests in him by virtue of his office, and the position which is occupied by a tenant for life at common law. Both are, as it were, only partial owners of the property they enjoy, being in a large measure trustees for posterity or for the official successor who is to follow them in the enjoyment of their estates. Thus, as in the case of a tenant for life, the holder of an ecclesiastical benefice is not allowed by the law to effect such a diminution of the value of his premises as would amount to either voluntary or permissive waste. The former is committed by active destruction, such as the felling of timber, while the latter consists in such passive acts of negligence as suffering fences to fall into decay for lack of repair, or allowing houses or outbuildings to become ruinous by reason of neglect. Both forms of waste, though distinguished by the common lawyer, are equally included in the ecclesiastical law under the general name of dilapidations. The subject has been extensively dealt with by ecclesiastical legislation for centuries past, and the present position of the law is one of paramount importance for all holders of country livings. Sir Simon Degge, in his "Parson's Counsellor," includes under dilapidations "the pulling down or destroying in any manner any of the houses or buildings belonging to a spiritual living, or suffering them to run into ruin or decay; or wasting or destroying the woods of the Church; or committing or suffering any wilful waste in or upon the inheritance of the Church." Whether at common law or before the Ecclesiastical Courts, waste was always very seriously regarded. Rolle, in his Abridgement, states that for waste by a Bishop, parson, or Prebendary, a writ of prohibition of waste may be obtained at common law. Lord Coke even went so far as to hold that extensive dilapidations committed by a Bishop would be sufficient cause for deposing him from his office. "If a Bishop or Archdeacon abates or fells all

the wood that he has as Bishop, he shall be deposed as a dilapidator of his house." The High Court of Justice will grant an injunction at the suit of the patron of the living to restrain the committal of waste.

It has always been the legally recognized custom in England for rectors and vicars to leave their houses in repair for their successors, and it was held in the case of Bunbury *v.* Hewson (3 Ex. 558) that this custom became law in the case of Wales by virtue of the statute 27 Henry VIII. chap. 26, which applied the laws of England to the Principality. In the days of the early English Church, the question of leaving ecclesiastical buildings in repair was the frequent subject of canonical and lay legislation. In very early times it was treated by a Constitution of Edmund. This document enacted that "if the rector of the church at his death shall leave the houses of the church ruinous or decayed, so much shall be deducted out of his ecclesiastical goods as shall be sufficient to repair the same, and to supply the other defects of the church." At a later date the Constitution of Othobon enacted as follows: "We do ordain and establish that all clerks shall take care decently to repair the houses of the benefice and other buildings as need shall require: whereunto they shall be earnestly admonished by their Bishops or Archdeacons: and if any of them after the monition of the Bishop or Archdeacon shall neglect to do the same for the space of two months, the Bishop shall cause the same effectually to be done at the costs and charges of such clerk out of the profits of his church and benefice." The same difficulty was aimed at by a Constitution of Mepham, and legislation was undertaken on the subject by the statute 13 Elizabeth, chap. 10.

Besides the remedies by prohibition, it was originally considered that an action for damages would lie against the executors of the deceased incumbent in all cases where dilapidations had been committed. On this assumption, in the case of Huntley *v.* Russell (13 Q.B. 572), the representatives of a deceased incumbent were held liable for the value of gravel removed from a gravel-pit which the incumbent had opened. In Ross *v.*

Adcock (L.R. 3, C.P. 655), however, it was finally decided that the right of an incumbent to recover damages from the representatives of his predecessor was confined to cases of dilapidations to houses and buildings simply. It has been decided that a perpetual curate is liable equally with rectors and vicars for dilapidations that he has committed (Mason *v.* Lambert, 12 Q.B. 795). In the case of waste committed by the felling of trees, the purposes for which such may be legitimately felled are limited to the provision of proper repairs for the church, vicarage house, and buildings. This subject was treated by the statute of Edward I. known as "Ne Rector Prosternat Arbores in Caemiterio." This document affected to decide the question rather "by writing than by statute," and Lord Coke describes it as "a treatise only," and says that it is merely declaratory of the common law. According to its wording the parsons of the church are prohibited "that they do not presume to fell them [the trees] down unadvisedly, but when the chancel of the church doth want necessary reparation; neither shall they be converted to any other use except the body of the church doth need like repair." According to the old law, in the case of the death of an incumbent leaving behind him claims for dilapidations to be preferred against his representatives, though such claims were payable before legacies left by the deceased, they were postponed to the satisfaction of his debts, and in the case of small estates there were frequently no assets available to pay the claims. However, since the Ecclesiastical Dilapidations Acts claims under the Statutes rank as debts.

The Ecclesiastical Dilapidations Acts, 1871-1872, have consolidated, and to some extent modified, the law bearing on this subject, while at the same time they have introduced a totally new form of procedure in the case of dilapidations. The principal expedient has been to arrange for a competent inspection of ecclesiastical buildings, with a view to ascertaining their state of repair on such occasions as may be considered convenient. Under the provisions of the Act of 1871, the incumbent of a parish, the Rural Dean of the district, the Archdeacon

or the patron of the living, may apply to the Bishop of the diocese for the buildings to be inspected. On the receipt of such an application, the Bishop may order the diocesan surveyor to make the inspection desired, giving notice of such order to the incumbent of the parish a month before such inspection is to take place. The surveyor is charged with reporting on three separate points: (1) The repairs which are required by the edifices; (2) the probable cost of effecting them; and (3) the time when they ought to be executed. The incumbent is then allowed, if he so pleases, to object to the report; but if no such objection is made, the report is considered final. Should an objection be made, the Bishop proceeds to review the report, and such modification thereof as may be effected by his decision is final. It then becomes the duty of the incumbent to effect the repairs ordered, and if failure is made to execute them within the time prescribed, the Bishop may order sequestration of the benefice for the purpose of raising the necessary funds. When the repairs are completed to the satisfaction of the surveyor, the incumbent has the right to call for a certificate to that effect. The grant of this exempts him from all further survey of and report on the premises for a period of five years, and if he should vacate the benefice within such period, he and his personal representatives are freed from all liability, except in respect of acts of wilful waste. The position of the representatives is similar, should the incumbent die within the five years during which exemption is granted to him. Where any vacancy occurs in the tenure of a living, and no certificate of exemption has been granted during the five years immediately preceding such vacancy, an inspection by the diocesan surveyor must be directed within three months, when objections may be taken by parties interested either directly or as executors. To secure the buildings against loss by fire, the incumbent is required to insure them for at least three-fifths of their value in the names of himself and the Governors of Queen Anne's Bounty with some insurance company which meets with the approval of the Governors. The receipts for the premiums paid must be produced on the visitation of the Archdeacon or Bishop.