

The Prebend of Cudworth cum Cnolla.

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THE general facts respecting Prebends are so familiar that only a distinct variation from these justifies my directing attention to this Prebend in particular.

Interesting circumstances attach to the history of many of the Prebends in this Diocese. But it is because that of Cudworth-cum-Cnolla differs from all the rest—even Dinder—that a mention of these particular matters is offered here.

Without speaking of the tenure of Cudworth¹ lands before the 12th Century, it is enough to say that at that date the family of de Fournelles (or Furneaux) were in possession of the Manor. I have no copy of their Arms, but I believe the shield bore “a bend, with six cross crosslets.”

Their house seems to have stood to the S.E. of the Church; either encircled by the moat which still encloses so lovely a spot (400ft. above sea level), or clear of this, a little further east, where pavement was dug up not many years ago.

There are still indications of an entrance to the Churchyard from the South; and the South Door (with its Porch now gone) would have been their natural way of entering the Church, after the Early English Nave was added to the small building which seems to have occupied the site of what is now regarded only as an Aisle.

It was in or about 1174² that this Family, in the person of

1. There are at least twelve different spellings of the name.
2. In this year also Wells was created a borough.

Alan de Fernellis, took steps to raise the Church and Rectory of Cudworth to the status of a perpetual Prebend in the Cathedral of Wells,—Geoffrey de Furnellis joining with his father Alan in making the gift.³ The witnesses thereto were Walter, Prior of Buckland, William, Parson of Chard (Cerd); William Malherbie, and others.

But this gift was enhanced by an important addition which accounts for the full title of the Prebend, viz. “Cudworth-cum-Cnolla.”

Alan de Fernellis had purchased from Richard of Knowle the advowson of that place, of which the Manor seems to have belonged to Cudworth from the time of the Conquest, and he now attached this advowson to the gift by which the Church and Rectory of Cudworth took rank as a Prebend of Wells.

The gift had been duly accepted by Reginald (described as “Minister of the Church of Bath”),⁴ the witnesses being the Dean and Archdeacon of Wells, Ralph de Lechlade (afterwards Dean of Wells), and Richard of Ken. Also “the Butler and the Marshall,” but of which establishment is not said. I presume however, it was the Bishop’s.

In confirmation of this addition to the gift, Richard de Cnolla had to abjure upon the Gospels—in the presence of the Bishop and the Dean—all right in the advowson of Knowle, and to grant it to be thenceforth a “Member of the Church of Kudeworth,” as the lands were of that Manor.⁵ The Church of Cudworth was by then already a Prebend of Wells, and the abjuration respecting Knowle would obviously be later than the acquirement of the Advowson. To this abjuration the witnesses were the Archdeacon of Bath; Walter, now signing as Parson of Chaffcombe; Eustace of Dowlish; and Hugh, his brother.

But these proceedings received further confirmation. And a

3. *Calendar of MSS. of the Dean and Chapter of Wells.* Vol. I, 1907, p. 42

4. *Op. cit.*, p. 44.

5. *Op. cit.*, p. 46.

Charter was granted by King Richard I, which included among gifts to the Cathedral "the Church of Codeworth with the Chapel of Knolle"; White Lackington, the gift of James Mt. Sorelli; and Dowlish, the gift of Ralph Wake.⁶ The Archbishop was one of the witnesses on that occasion.

But even this was yet further endorsed. A Bull of Pope Clement III (dated from the Lateran, and addressed to Reginald, Bishop of Bath), taking into his protection the Church of Wells, makes special mention of some of its possessions, including "Cudewide."⁷

A later owner of the Manor, or rather part-owner, Alan de Kyngeston, "lord of a moiety of the Manor of Codeworth," relinquished to the Dean and Chapter of Wells his claim to a commons of 3d. "which he used to take daily in the said Church in the days of his coming to Wells."⁸ No doubt the smallest gifts were thankfully received. A shilling was not an unusual legacy to the Cathedral.

In the case of the Prebend of Cudworth we have to note three distinct points.

I. *First*, the joint gift of the Advowson of Cnolle therewith to the Cathedral. It was *not* to be held separately, but to be "a Member of the Church of Cudworth," now raised to the rank of a Prebendal Church and Rectory.⁹

II. *Secondly*, the circumstance—absolutely unique in the history of the Prebends of the Diocese—that from the beginning the Cudworth Prebend in Wells Cathedral existed only as a privilege attaching to the Church with which it was endowed.¹⁰ No change took place, as in other cases, in the Cure of Souls, and no Vicarage was assigned.

It is a familiar fact that with the usual assignment the

6. *Op. cit.*, p. 309.

7. *Op. cit.*, p. 435.

8. *Op. cit.*, p. 485.

9. *Op. cit.*, p. 46.

10. See above Sections; also Appendix, Weaver's "Somerset Incumbents."

Church had a separate existence apart from the Prebend, and that the Church itself had thenceforth no connection with the office which had been endowed from its lands and revenues, while the Prebendary had no right whatever in the Church or Cure of Souls (except by way of Patronage).

Even in the differing case of Dinder, the offices of the Prebendary and the Chaplain were long distinct, and their identity questioned; and they had separate sources of revenue.

Whereas in other cases¹¹ the existing Parson's life interests had to be saved, it was otherwise in the case of Cudworth. The Rector was Prebendary, the Prebendary had the Cure of Souls—both of Cudworth and Cuolle—his endowment was the Revenue of those Churches, and his control of both places clear.

These conditions were never questioned or varied throughout the centuries, and are amply confirmed by every ancient record and note relating to the Benefice of Cudworth.

In regard to more recent times I will speak presently.

Mention is found of the Installation of one Peter de Dene as Prebendary of Cudworth in 1299, and an Edward de la Cnoll had been Dean of Wells for a period covering 1267-74, and part of that period he was Prebendary of Dinder.¹² A more notable occupant of the Cudworth Prebend was Suffragan-Bishop Cornish, about the end of the XV Century. He died exactly 400 years ago.¹³

It will be understood, of course, that when the Church had been raised to the dignity of a Prebend, the office of the Prebendary was regarded as the highest, and most inclusive, appertaining to the Church, and the Incumbent became entitled to admission and installation to the Prebend direct. In this unique case (as I have said) the "rights of the existing Incumbent" did not need "saving." The Prebendal Benefice

11. *Cal. MSS. Wells*, re Shalford, Henstridge, etc.

12. *S. and D. Notes and Queries*, VII, 128.

13. Dr. Busby, of Westminster, also occupied this Prebend.

is accordingly described thenceforth as a "Rectoria Curata," and in 1351 the expression "ecclesiae prebendalis de Cudworth prebendarius" occurs in Bishop Ralph's Register, a fact kindly furnished by Mr. A. F. Somerville.

In ordinary cases the Prebendary was expressly relieved from the Cure of Souls, and in regard to Dinder this was the point raised by the Bishop in 1480-90, when the Prebendary first claimed to act as his own Chaplain.¹⁴ The objection was not unreasonable. For Yatton had two Chapels besides the Church, and so had St. Decuman's, and the Prebendary could not himself be three persons.

Dinder had been given by William of Flanders to Bishop Jocelyn of Bath, and was raised to a Prebend in 1268 in favour of Richard de Bamford, Canon of Wells, with the *express provision* that he should appoint a Chaplain.

We have seen that the Prebendary of Cudworth was not relieved of the Cure of Souls. Indeed the fact was so far otherwise that when Suffragan-Bishop Cornish was appointed to Cudworth (from Axbridge), he had to apply for "leave of absence" in order to spend a twelvemonth in Wells, as he—for some reason—desired to do, "under the usual statutable conditions." And somewhat later a Deacon is found serving under the Prebendary, and receiving a fifth of the revenue.¹⁵

III. A *third* distinction is that while in the other cases the Prebendary could not appoint to a Chapel within the Parish to which he had presented a Vicar (but the Vicar alone could appoint to any such Chapel), the Prebendary of Cudworth, as himself Incumbent, had absolute control of the Chapel of Cnoll, as well as of the Church of Cudworth. In the case of other Prebends, even if such Chapels had before been in the gift of the Bishop, his Patronage ceased on the Mother Church becoming a Prebend, and on the Prebendary appointing a Vicar.

14. *Cal. MSS. Wells*, p. 366.

15. *S. and D. Notes and Queries*, VII, 128.

Bearing in mind the above three points, we proceed to note that the original conditions continued unchallenged—and therefore no doubt the less noticed—down to the death of Canon Heberden in 1844. Here, however, as probably in the case of Prebends in some other Dioceses, the Prebendary had exercised his undoubted right of employing a Stipendiary Curate, one of those whose miserable stipends were augmented out of the Queen Anne Bounty.

To this Clerk the Act of I Geo. I. c. 10¹⁶ had given a new status, and “fixity of tenure.” But while that Act provided for the non-removal of the Curate when once appointed by the Incumbent to the “augmented Curacy,” the rights of the Incumbent were expressly reserved. He was not “divested or discharged” from the Cure of Souls, but such “with all other Parochial rights and duties” (other than the Augmentation and Allowances specified in the Act) were to be and remain “in the same state, plight, and manner as before the making of this act, and as if this Act had not been made.”

In regard to the “Stipendiary Preachers or Curates” whose salaries were so augmented, the term “Perpetual Curate” does not occur in the Act:—it was never applicable in the sense in which it is now used, as carrying the Cure of Souls. And although it appears in connection with quite the later nominations of Canon Heberden, it was never assumed by themselves, until Mr. Cabbell—after this Prebendary’s death—sought from the Ecclesiastical Commissioners an increase of his Stipend—albeit he never seems to have officiated in the Parish at all. Nor did his predecessor, Mr. Colmer, who during the term of his 10 years Curacy held no fewer than six other preferments. The latter fact I gather from information given me by Mr. H. Gray, of Acton.

Some years before the death of Dr. Heberden the Act of 1838 was passed requiring the residence of all future Incum-

16. For the loan of this Act, I am indebted to the kindness of Mr. R. Harris, Diocesan Registrar.

bents within their Cures, though allowing to Prebendaries a longer period of absence in the year than was specified for the Clergy generally.

For the remainder of Dr. Heberden's life all continued at Cudworth as before. Two years later the Cathedral Act of 1840 passed, by which also Dr. Heberden as Prebendary was unaffected, and he survived to 1844—(sometimes quoted as 1843)—Mr. Cabbell continuing nominally as Curate until 1856, though never (it seems) officiating in the Church.

But on the death of Canon Heberden it was assumed by the Ecclesiastical Commissioners and others (just as in the case of Dinder) that Cudworth became subject to the changes made by the Act of 1840. The unique and unquestioned facts of the case at Cudworth were overlooked, the position of the Prebend as an integral part of a Cure of Souls was disregarded, and of the Prebendary as the actual Incumbent of the Church and Benefice.

While the Nominal Curate (Mr. Cabbell) was of necessity left undisturbed, the Prebendary who succeeded Dr. Heberden never fulfilled the conditions of his Cure, nor the requirements of the Act of 1838, nor claimed his rights and privileges in the Parish Church.

Meanwhile the Ecclesiastical Commissioners—as in the case of Dinder—took possession of the Revenues of the Prebend. But the estimated value of these (exclusive of Knowle) was afterwards regranted to the present United Benefice. This was done nominally as a matter of grace, but it actually took place within three years of the Dinder Award, which required restitution in part by the Ecclesiastical Commissioners to that Prebend.

The restoration of the "Status quo ante" at Dinder is a matter of comparatively recent history, and will be recollected by many others besides myself. Justice has yet to be done to the Church and Prebend of Cudworth.

For the ancient position of these was *not changed* by the

Act of 1840, and has never been lost. It was definitely protected by the provisions of the Act under Section 22, this Prebend having personal spiritual duties attaching to it,—duties rendered all the more imperative in view of the Act of 1838.

This point is made abundantly clear by various decisions of the Courts.

In *Reg. v. Champneys* (L.R. 6 C.P. at page 397), Justice Willes said that “The Act 3 and 4 Vict. c. 113 was not intended to interfere with any existing or active Cure of Souls.” And the remarks of the Judges in that case (of the Rectory of Tatenhill) are sufficient to show that the emoluments of property to which spiritual duties were attached, or in which a Cure of Souls was involved, did not become vested in the Commissioners under the above Act. (The Court was composed of Bovill, C. J., and Willes, Montague Smith, and Brett, J. J.).

The point here made applies equally to the case of Cudworth in 1844.

As regards lapse of time, and interim action, the Dinder Award of Lord Justice Coleridge, a copy of which was furnished me by the kind permission of the present Bishop, held that the course taken between 1845 and 1883 had not had the effect of severing the Prebend from the Rectory (even though the appointments to them had been separately made), and that these could only be held together.

In another case which I well remember—*McAlister v. Bishop of Rochester*, L.R. 5 C.P. Div. 194, it was shown that a Bishop—even with the consent of his nominees—cannot alter the status of an ecclesiastical Benefice. (Grove and Lindley, J. J.)—Lindley J said (p. 206) that an Incumbent’s rights “are not merely private rights which can be waived or renounced at his own will and pleasure . . . and he cannot divest himself of these duties or of the rights which accompany them by any such conduct as is imputed to him.”

So neither the *action* of the Commissioners and Bishop in 1844, nor the *inaction* of the Prebendaries since, can have deprived Cudworth of its rights.

The above cases are mentioned by Cripps, but the actual extracts (and a later one from Phillimore) have been kindly furnished to me by Mr. J. B. Paynter.

Probably at any time up to 1890 the Prebendaries appointed by Lord Auckland and Lord Arthur Hervey might have established their claims to the Parish Church and Cure of Cudworth. In 1890 the holder of the Stall accepted another Benefice which would have voided his claim to any Cure of Souls at Cudworth. The Stipendiary Curate living at Canon Heberden's death had survived to 1856, and the appointments of successors in 1856 and 1885 were made by the above named Bishops without the facts having been recognised. Whether these facts would have shown the Curacy to have been existing still, or to have been absorbed in the Incumbency and Prebend under the Act of 1838 (requiring residence), is immaterial to the history under review. But certainly elsewhere Curacy, Rectory, and Prebend, *had become so merged*.

The above reference to the events of 1890, taken with the decease in 1901 of the second Curate episcopally appointed, indicates that at the latter date the entire Benefice, Church and Prebend (in such a case Phillimore calls the Church the Corps of the Prebend),¹⁷ was at the disposal of the Bishop, and that any presentation could only be to this *as a whole*. However, through the general oversight as to the actual facts, matters continued to drift.

Meantime a change had occurred which has distinctly served to protect the interests of Cudworth.

The Patronage of Chillington had been surrendered by the Dean and Chapter of Bristol to the Bishops of Bath and Wells for the express purpose of the union of that "Church and Cure" with the "Benefice" of Cudworth—the latter ex-

17. *Eccles. Law*, 2nd edit., p. 398.

pression of necessity including all that belonged thereto—whether Church, Prebend, or Cure of Souls.

“Benefice” was the wording of the Ecclesiastical Commissioners themselves in their description of Cudworth, and in the consequent Order in Council, dated Feb. 12, 1886, confirming the Grant and condition of Patronage. This course, being a dealing with the Benefice “as a whole,” was perfectly legal.

Since 1885, there has been no appointment of a separate Incumbent of Cudworth. The appointment is now to Chillington carrying with it the Benefice of Cudworth (under the above Order), and so the way remains perfectly open for the due recognition of all this expression means in the light of the centuries here reviewed, and of the decisions to which reference has been made. While a License suffices to admit to Chillington, the Bishop’s gift of Cudworth therewith must entitle the holder to admission to that Church by Installation to the Prebend, as part of the “all and singular advantages thereto belonging,” and as being the actual “Benefice” of which the Parish Church is the “Corps.”

After exercising his gift of any Benefice as a whole, a Patron is necessarily “functus officio” in respect of each individual part of his gift, and cannot distribute these severally to others.

Mr. Weaver, in his “Somerset Incumbents,” points out that no list of separate Incumbents of Cudworth is there included, because these had been the holders of the Prebend, and their names would belong to the list of Prebendaries. But his remark that it had long been thought that the Prebend of Dinder was the only “*Rectoria Curata*” in the Diocese, needs to be qualified by observing that the status of Dinder as such was not original, and had been in frequent dispute, and was only re-established in 1883, while the Prebend of Cudworth was a “*Rectoria Curata*” from its foundation, and continued

such without question—or any attempt at variation—up to the death of Canon Heberden in 1844.

The bearing of all this on Cnoll (or Knowle St. Giles) would require separate treatment, and is not essential to the point presented in the present paper.

It must be understood that behind what is here written is a mass of fact, law, and argument, which has been carefully compiled and tested, but would be too ponderous for further notice on the present occasion.