Erskine May, Vol. III, Chapter XIV, pp. 235-254

Scotland: the Disruption

The church of Scotland, like her sister church of England, has also been rent by schisms. The protracted efforts of the English government to sustain episcopacy in the [236] establishment, (1) resulted in the foundation of a distinct episcopalian church. Comparatively small in numbers, this communion embraced a large proportion of the nobility and gentry who affected the English connexion, and disliked the democratic spirit and constitution of the Presbyterian church. In 1732, the establishment was further weakened by the retirement of Ebenezer Erskine, and an ultra-puritanical sect, who founded the Secession Church of Scotland. This was followed by the foundation of another seceding church, called the Presbytery of Relief, under Gillespie, Boston, and Colier;(2) and by the growth of independents, voluntaries, and other sects. But the widest schism is of recent date; and its causes illustrate the settled principles of Presbyterian polity; and the relations of the church of Scotland to the state.

History of Lay Patronage in Scotland

Lay patronage had been recognised by the Catholic church in Scotland, as elsewhere; but the Presbyterian church soon evinced her repugnance to its continuance. Wherever lay patronage has been allowed, it has been the proper office of the church to judge of the qualifications of the clergy, presented by patrons. The patron nominates to a benefice; the church approves and inducts the nominee. But this limited function, which has ever been exercised in the church of England, did not [237] satisfy the Scottish reformers, who, in the spirit of other Calvinistic churches, claimed for the people a voice in the nomination of their own ministers. Knox went so far as to declare, in his First Book of Discipline,—which, however, was not adopted by the church,—'that it appertaineth unto the people, and to every several congregation, to elect their minister.' The Second Book of Discipline, adopted as a standard of the church in 1578, qualified this doctrine: but declared 'that no person should be intruded in any offices of the kirk contrary to the will of the congregation, or without the voice of the eldership.' But patronage being a civil right, the state undertook to define it, and to prescribe the functions of the church. In 1567, the Parliament declared that the presentation to benefices 'was reserved to the just and ancient patrons,' while the examination and admission of ministers belonged to the church. Should the induction of a minister be refused, the patron might appeal to the General Assembly.(3) And again, by an Act of 1592, presbyteries were required to receive and admit whatever qualified minister was presented by the crown or lay patrons.(4) In the troublous times of 1649, the church being paramount, Parliament swept away all lay patronage as a 'popish custom.'(5) On the Restoration it was revived, and rendered doubly odious by [238] the persecutions of that period. The Revolution restored the ascendency of the Presbyterian Church and party; and again patronage was overthrown. By an Act of 1690, the elders and heritors were to choose a minister for the approval of the congregation; and if the latter disapproved the choice, they were to state their reasons to the presbytery, by whom the matter was to be determined.(6) Unhappily this settlement, so congenial to Presbyterian traditions and sentiment, was not suffered to be permanent. At the Union, the constitution and existing rights of the church of Scotland were guaranteed: yet within five years, the heritors determined to reclaim their patronage. The time was favourable: Jacobites and high church Tories were in the ascendant, who hated Scotch Presbyterians no less than English dissenters; and an Episcopalian parliament naturally favoured the claims of patrons. An Act was therefore obtained in 1712, repealing the Scotch Act of 1690, and restoring the ancient rights of patronage.(7) It was an untoward act, conceived in the spirit of times before the Revolution.

The General Assembly then protested against it as a violation of the treaty of union; and long continued to record their protest. The people of Scotland were outraged. Their old strife with Episcopalians was still raging,—and to that communion most of the patrons belonged. For some time patrons did [239] not venture to exercise their rights: ministers continued to be called by congregations; and some who accepted presentations from lay patrons were degraded by the church. Patronage, at first a cause of contention with the state and laity, afterwards brought strifes into the church herself. The Assembly was frequently at issue with presbyteries concerning the induction of ministers. The church was also divided on the question of presentations; the moderate party, as it was called, favouring the rights of patrons, and the popular party the calls of the people. To this cause was mainly due the secession of Ebenezer Erskine and Gillespie, and the foundation of their rival churches. But from about the middle of the last century the moderate party, having obtained a majority in the Assembly, maintained the rights of patrons; and thus, without any change in the law, the Act of 1712 was, at length, consistently enforced. A call by the people had always formed part of the ceremony of induction; and during the periods in which lay patronage had been superseded, it had unquestionably been a substantial election of a minister by his congregation. A formal call continued to be recognised: but presbyteries did not venture to reject [240] any qualified person duly presented by a patron. At the end of the century, the patronage question appeared to have been set at rest.

But the enforcement of this law continued to be a fertile cause of dissent from the establishment. When a minister was forced upon a congregation by the authority of the Presbytery or General Assembly, the people, instead of submitting to the decision of the church, joined the Secession Church, the Presbytery of Relief, or the Voluntaries. No people in Christendom are so devoted to the pulpit as the Scotch. There all the services of their church are centred. No liturgy directs their devotion: the minister is all in all to them,—in prayer, in exposition, and in sermon. If acceptable to his flock, they join devoutly in his prayers, and are never weary of his discourses: if he finds no favour, the services are without interest or edification. Hence a considerable party in the church were persuaded that a revival of the ancient principles of their faith, which recognised the potential voice of the people in the appointment of ministers, was essential to the security of the establishment.

The Veto Act

Hostility to lay patronage was continually increasing, and found expression in petitions and parliamentary discussion. Meanwhile the 'non-intrusion party,' led by Dr. Chalmers, were gaining ground in the General Assembly: in 1834, [241] they had secured a majority; and, without awaiting remedial measures from Parliament, they succeeded in passing the celebrated 'Veto Act.'(8) This Act declared it to 'be a fundamental law of the church that no pastor shall be intruded on a congregation contrary to the will of the people;' and provided that if, without any special objections to the moral character, doctrine, or fitness of a presentee, the majority of the male heads of families signified their dissent, the presbytery should, on that ground alone, reject him. Designed, in good faith, as an amendment of the law and custom of the church, which the Assembly was competent to make, it yet dealt with the rights already defined by Parliament. Patronage was border land, which the church had already contested with the state; and it is to he lamented that the Assembly,—however well advised as to its own constitutional powers,(9)—should thus have entered upon it, without the concurrence of Parliament. Never was time so propitious for the candid consideration of religious questions. Reforms were being introduced into the church; the grievances of dissenters were being redressed; a popular party were in the ascendant; and agitation had lately shown its power over the deliberations of the legislature. A Veto Act, or other compromise sanctioned by Parliament, would have brought peace to the church. But now the state had made one law: the [242] church another; and how far they were compatible was soon brought to a painful issue.

The Auchterarder Case

In the same year, Lord Kinnoull presented Mr. Young to the vacant parish of Auchterarder: but a majority of the male heads of families having objected to his presentation, without stating any special grounds of objection, the presbytery refused to proceed with his trials, in the accustomed form, and judge of his qualifications. Mr. Young appealed to the synod of Perth and Stirling, and thence to the General Assembly; and the presbytery being upheld by both these courts, rejected Mr. Young.

Having vainly appealed to the superior church courts, Lord Kinnoull and Mr. Young claimed from the Court of Session an enforcement of their civil rights. They maintained that the presbytery, as a church court, were bound to adjudge the fitness of the presentee, and not to delegate that duty to the people, whose right was not recognised by law; and that his rejection, on account of the veto, was illegal. The presbytery contended that admission to the pastoral office being the function of the church, she had a right to consider the veto of the congregation as a test of fitness, and to prescribe rules for the guidance of presbyteries. In the exercise of such functions the jurisdiction of the church was supreme, and beyond the control of the civil tribunals. The court, however, held that neither the law of the church, prior to the Veto Act, nor the law of the land, recognised the right of a congregation to [243] reject a qualified minister. It was the duty of the presbytery to judge of his fitness, on grounds stated and examined; and the Veto Act, in conferring such a power upon congregations, violated the civil and patrimonial rights of patrons, secured to them by statute, and hitherto protected by the church herself. Upon the question of jurisdiction, the court maintained its unquestionable authority to give redress to suitors who complained of a violation of their civil rights; and while admitting the competency of the church to deal with matters of doctrine and discipline, declared that in trenching upon civil rights she had transgressed the limits of her jurisdiction. To deny the right of the Court of Session to give effect to the provisions of the statute law, when contravened by church courts, was to establish the supremacy of the church over the state. From this decision the presbytery appealed to the House of Lords, by whom, after able arguments at the bar, and masterly judgments from Lord Chancellor Cottenham and Lord Brougham, it was, on every point affirmed.

Submission to the law, even under protest, and an appeal to the remedial equity of Parliament, might now have averted an irreconcilable conflict between the civil and ecclesiastical powers, without an absolute surrender of principles for which the church was contending. But this occasion was lost. The Assembly, indeed, [244] suspended the operation of the Veto Act for a year; and agreed that, so far as the temporalities of Auchterarder were concerned, the case was concluded against the church. The manse, the glebe, and the stipend should be given up: but whatever concerned the duties of a presbytery, in regard to the cure of souls, and the ministry of the gospel, was purely ecclesiastical and beyond the jurisdiction of any civil court. A presbytery being a church court, exercising spiritual powers, was amenable to the Assembly only, and was not to be coerced by the civil power. On these grounds it was determined to refuse obedience to the courts; and the hopeless strife continued between the two jurisdictions, embittered by strong party differences in the Assembly, and among the laity of Scotland. Parliament alone could have stayed it: but the resistance of the church forbade its interposition; and a compromise, proposed by Lord Aberdeen, was rejected by the Assembly.

The judgment of the Court of Session having been affirmed, the presbytery were directed to make trial of the qualifications of Mr. Young: but they again refused. For this refusal Lord Kinnoull and Mr. Young brought an action for damages, in the Court of Session, against the majority of the presbytery, and obtained a unanimous decision that they were entitled to pecuniary redress for the civil wrongs they had sustained. On appeal to the House of Lords, this judgment also was unanimously affirmed. In other cases, the Court of [245] Session interfered in a more peremptory form. The presbytery of Dunkeld, having inducted a minister to the parish of Lethendy, in defiance of an interdict from the Court of Session, were brought

up before that court, and narrowly escaped imprisonment. The crown presented Mr. Mackintosh to the living of Daviot and Dunlichity: when several parishioners, who had been canvassing for another candidate, whose claims they had vainly pressed upon the secretary of state, prepared to exercise a veto. But as such a proceeding had been pronounced illegal by the House of Lords, Mr. Mackintosh obtained from the Court of Session a decree interdicting the heads of families from appearing before the presbytery , and declaring their dissent without assigning special objections.

The Strathbogie Case

While this litigation was proceeding, the civil and ecclesiastical authorities were brought into direct and violent collision. Mr. Edwards was presented, by the trustees of Lord Fife, to the living of Marnoch, in the presbytery of Strathbogie: but a majority of the male heads of families having signified their veto, the seven ministers constituting the presbytery, in obedience to the law of the church and an order of the General Assembly, refused to admit him to his trials. Mr. Edwards appealed to the Court of Session, and obtained a decree directing the presbytery to admit him to the living, if found qualified. The ministers [246] of the presbytery were now placed in the painful dilemma of being obliged to disobey either the decree of the civil court, or the order of the supreme court of the church. In one case they would be punished for contempt; in the other for contumacy. Prohibited by a commission of Assembly from proceeding further, before the next General Assembly, they nevertheless resolved, as ministers of the established church, sworn to pay allegiance to the crown, to render obedience to the law, constitutionally interpreted and declared. For this offence against the church they were suspended by the commission of Assembly; and their proceedings as a presbytery were annulled.

The Court of Session, thus defied by the church, suspended the execution of the sentence of the commission of Assembly against the suspended ministers, prohibited the service of the sentence of suspension, and forbade other ministers from preaching or intruding into their churches or schools.(10) These proceedings being reported to the General Assembly, that body approved of the acts of the commission,—further suspended the ministers, and again provided for the performance of their parochial duties. Again the Court of Session interfered, and prohibited the execution of these acts of the Assembly, which were in open [247] defiance of its previous interdicts. The church was in no mood to abate her pretensions. Hitherto the members of the Strathbogie presbytery had been under sentence of suspension only. They had vainly sought protection from Parliament; and on the 27th of May 1841, the General Assembly deposed them from the ministry. Dr. Chalmers, in moving their deposition, betrayed the spirit which animated that Assembly, and the dangers which were now threatening the establishment. 'The church of Scotland,' he said, 'can never give way, and will sooner give up her existence as a national establishment, than give up her powers as a self-acting and self-regulating body, to do what in her judgment is best for the honour of the Redeemer, and the interest of his kingdom upon earth.' It was evident that the ruling party in the Assembly were prepared to resist the civil authority at all hazards.

The contest between the civil and ecclesiastical jurisdictions was now pushed still further. The majority of the presbytery of Strathbogie, who had been deposed by the General Assembly, but reinstated by the Court of Session, elected commissioners to the General Assembly: the minority elected others. The Court of Session interdicted the commissioners elected by the minority, from taking their seats in the Assembly.(11) And in [248] restraining the contumacy of these refractory commissioners, the civil court was forced to adjudge the constitution and rights of the Ecclesiastical Assembly. All these decisions were founded on the principle that ministers and members of the Church of Scotland were not to be permitted to refuse obedience to the decrees of the civil courts of the realm, or to claim the exercise of rights which those courts had pronounced illegal. The church regarded them as encroachments upon

her spiritual functions.

Claim of the General Assembly

It was plain that such a conflict of jurisdictions could not endure much longer. One or the other must yield: or the legislature must interfere to prevent confusion and anarchy. In May 1842, the General Assembly presented to Her Majesty a claim, declaration, and protest, complaining of encroachments by the Court of Session; and also an address, praying for the abolition of patronage. These communications were followed by a memorial to Sir Robert Peel and the other members of his government, praying for an answer to the complaints of the church, which, if not redressed, would inevitably result in the disruption of the establishment. On behalf of the government, Sir James Graham, Secretary of State for the Home Department, returned a reply, stern and unbending in tone, and with more of rebuke than conciliation. The aggression, he said, had originated with the Assembly, who had passed [249] the illegal Veto Act, which was incompatible with the rights of patrons as secured by statute. By the standards of the church, the Assembly were restrained from meddling with civil jurisdiction: yet they had assumed to contravene an Act of Parliament, and to resist the decrees of the Court of Session,—the legal expositor of the intentions of the legislature. The existing law respected the rights of patrons to present, of the congregation to object, and of the church courts to hear and judge,—to admit or reject the candidate. But the Veto Act deprived the patrons of their rights, and transferred them to the congregations. The government were determined to uphold established rights, and the jurisdiction of the civil courts: and would certainly not consent to the abolition of patronage. To this letter the General Assembly returned an answer of extraordinary logical force: but the controversy had reached a point beyond the domain of argument.

The church was hopelessly at issue with the civil power. Nor was patronage the only ground of conflict. The General Assembly had admitted the ministers of *quoad sacra* parishes and chapels of ease, to the privileges of the parochial clergy, including the right of sitting in the Assembly, and other church courts.(12) The legality of the acts of the Assembly was called in question; and in January 1843, the Court of Session adjudged them to be illegal.(13) On the meeting of [250] the Assembly on the 31st of January, a motion was made, by Dr. Cook, to exclude the *quoad sacra* ministers from that body, as disqualified by law: but it was lost by a majority of ninety-two. Dr. Cook, and the minority, protesting against the illegal constitution of the Assembly, withdrew; and the *quoad sacra* ministers retained their seats, in defiance of the Court of Session. The conflict was approaching its crisis; and, in the last resort, the Assembly agreed upon a petition to Parliament, complaining of the encroachments of the civil courts upon the spiritual jurisdiction of the church, and of the grievance of patronage.

Proceedings in Parliament

This petition was brought under the consideration of the Commons, by Mr. Fox Maule. He ably presented the entire case for the church; and the debate elicited the opinions of ministers, and the most eminent members of all parties. Amid expressions of respect for the church, and appreciation of the learning, piety, and earnestness of her rulers, a sentiment prevailed that until the General Assembly had rescinded the Veto Act, in deference to the decision of the House of Lords, the interposition of Parliament could scarcely be claimed, on her behalf. She had taken up her position, in open defiance of the civil authority; and nothing would satisfy her claims but submission to her spiritual jurisdiction. Some legislation might yet be possible: but this petition assumed a recognition of the claims of the church, to which the majority of the House were not prepared to assent. Sir Robert Peel regarded these claims as involving [251] 'the establishment of an ecclesiastical domination, in defiance of law,' which 'could not be acceded to without the utmost ultimate danger, both to the religious liberties and civil rights of the people.' The House concurred in this opinion, and declined to entertain the claims

of the church by a majority of one hundred and thirty-five.

The Non-Intrusionists Secede

This decision was accepted by the non-intrusion party as conclusive; and preparations were immediately made for their secession from the church. The General Assembly met on the 18th May, 1843, when a protest was read by the moderator, signed by 169 commissioners of the Assembly, including *quoad sacra* ministers and lay elders. This protest declared the jurisdiction assumed by the civil courts to be 'inconsistent with Christian liberty, and with the authority which the Head of the church hath conferred on the church alone.' It stated that the word and will of the state having recently been declared that submission to the civil courts formed a condition of the establishment, they could not, without sin, continue to retain the benefits of the establishment to which such condition was attached, and would therefore withdraw from it,—retaining, however, the confession of faith and standards of the church. After the reading of this protest, the remonstrants [252] withdrew from the Assembly; and joined by many other ministers, constituted the 'Free Church of Scotland.' Their schism was founded on the first principles of the Presbyterian polity,—repugnance to lay patronage, and repudiation of the civil jurisdiction, in ecclesiastical affairs. These principles,—at issue from the very foundation of the church,—had now torn her asunder.

A few days afterwards, the General Assembly rescinded the Veto Act, and the act admitting *quoad sacra* ministers to that court; and annulled the sentences upon the Strathbogie ministers. The seceders were further declared to have ceased to be members of the church, and their endowments were pronounced vacant. The church thus submitted herself, once more, to the authority of the law; and renewed her loyal alliance with the state.

The Free Church of Scotland

The secession embraced more than a third of the clergy of the church of Scotland, and afterwards received considerable accessions of strength.(14) Some of the most eminent of the clergy,—including Dr. Chalmers and Dr. Candlish,—were its leaders. Their eloquence and character insured the popularity of the movement; and those who denied the justice of their cause, and blamed them [253] as the authors of a grievous schism, could not but admire their earnestness and noble self-denial. Men highly honoured in the church, had sacrificed all they most valued, to a principle which they conscientiously believed to demand that sacrifice. Their once crowded churches were surrendered to others, while they went forth to preach on the hill-side, in tents, in barns, and stables. But they relied, with just confidence, upon the sympathies and liberality of their flocks;(15) and in a few years the spires of their free kirks were to be seen in most of the parishes of Scotland.

Patronage Act 1843

When this lamentable secession had been accomplished, the government at length undertook to legislate upon the vexed question of patronage. In 1840, Lord Aberdeen had proposed a bill, in the vain hope of reconciling the conflicting views of the two parties in the church; and this bill he now offered, with amendments, as a settlement of the claims of patrons, the church, and the people. The Veto Act had been pronounced illegal, as it delegated to the people the functions of the church courts; and in giving the judgment of the House of Lords, it had been laid down that a presbytery in judging of the qualifications of a minister were restricted to an inquiry into his 'life, literature and doctrine.' The bill, while denying a capricious veto to the people, recognised their right of objecting [254] to a presentation, in respect of 'ministerial gifts and qualities, either in general, or with reference to that particular parish;' of which objections the presbytery were to judge. In other words, they might show that a minister, whatever his general qualifications, was unfitted for a particular parish. He might be ignorant of Gaelic, among a Gaelic population: or too weak in voice to preach in a large

church: or too infirm of 1imb to visit the sick in rough Highland glens. It was argued, that with so wide a field of objection, the veto was practically transferred from the people to the presbytery; and that the bill being partly declaratory, amounted to a partial reversal of the judgment of the Lords in the Auchterarder case. But after learned discussions in both Houses, it was passed by Parliament, in the hope of satisfying the reasonable wishes of the moderate party in the church, who respected the rights of patrons, yet clung to the Calvinistic principle which recognised the concurrence of the people. To the people was now given the full privilege of objection; and to the church judicatories the exclusive right of judgment.

The secession of 1843, following prior schisms, augmented the religious disunion of Scotland; and placed a large majority of the people out of communion with the state church, which the nation itself had founded at the Reformation.(16)

Footnotes.

1. Supra, p. 71.
2. In 1847 the Secession Church and the Relief Synod were amalgamated under the title of the 'United Presbyterian Church.'
3. Scots Acts, 1567, c. 7.
4. James VI., Parl., xii. c. 116.
5. Scots Acts, 1649, c. 171; Buchanan, i. 98-105.
6. Scots Acts, 1690. c. 23.
7. 10 Anne, c. 12.
8. For a full narrative of all the circumstances connected with the state of parties in the Church, and the passing of this Act, see Buchanan's Ten Years' Conflict, i. 174-296.
9. The jurisdiction of the Assembly had been supported by the opinion of the law officers of the crown in Scotland.—Buchanan, i. 442.
10. Feb. 14th, 1840. Dunlop, Bell, and Murray's Reports, ii. 258, 585. Lord Gillies on the question of jurisdiction, said: 'The pretensions of the church of Scotland, at present, are exactly those of the Papal See a few centuries ago. They not only decline the jurisdiction of the civil courts, but they deny that Parliament can bind them by a law which they choose to say is inconsistent with the law of Christ.'
11. May 27th, 1842. Lord Fullerton, who differed from the majority of the court, said: 'According to my present impression, this court has no more right to grant such an interdict, than to interdict any persons from taking their seats and acting and voting as members of the House of Commons.'—Ibid.
12. Acts of Assembly, 1833, 1834, 1837, and 1839.
13. Stewarton Case, Bell, Murray, etc., Reports, iv. 427.
14. Of 947 parish ministers, 214 seceded; and of 246 *quoad sacra* ministers, 144 seceded. —Ann. Reg., 1843, p. 266; Speech of Lord Aberdeen, June 13th, 1843; Hans. Deb., 3rd Ser., lxix, 1414; Buchanan, ii. 464, 468; Hannay's Life of Dr, Chalmers.
15. In eighteen years they contributed £1,251,458, for the building of churches, manses, and schools; and for all the purposes of their new establishment no less a sum than £6,229,631. -Tabular abstracts of sums contributed to Free Church of Scotland to 1868-1869, with MS. additions for the two following years, obtained through the kindness of Mr. Dunlop, M.P.
16. In 1861, of 3,395 places of worship, 1,183 belonged to the Established Church; 889 to the Free Church; 465 to the United Presbyterian Church; 112 to the Episcopal Church; 104 to Roman Catholics; and 642 to other religious denominations, embracing most of the sects of English dissenters. On the census Sunday 228,767 attended the morning service of the Established Church; and no less than 255,482 that of the Free Church (Census Returns, 1851). In 1860, the latter had 234,963 communicants.

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