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THE  
CHURCHMAN

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FEBRUARY, 1888.

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ART. I.—TITHE RENT-CHARGE.

THE proposal to allow 5 per cent. to the landowner for paying the tithe rent-charge within three months after due, introduced in the original Bill of 1887, was withdrawn. It is, however, understood that efforts will be made on the part of some landowners (for many repudiate it) to get the allowance restored in 1888. It is therefore necessary to show the injustice of any collection cost, wrongfully imposed as it has been upon the titheowner by the action of the landowner, being transferred as a bonus to his advantage.

Through the commutation, very large values have been taken from the titheowner and handed over to the landowner. In the average of years, on the lowest estimate of elementary values, not less than three-sevenths of the whole tithe-value has been absorbed by the latter, while another seventh at least has, without loss to the titheowner, been secured as permanent profits.<sup>1</sup>

The conditions on which the transferred value was taken from the titheowner were two. One was, that the annual income should be so varied as to keep him always abreast of the living costs of the day. The other was, that he should be assured the payment of the sum reserved to him punctually, fully, and in peace. Neither of these conditions has been fulfilled.

1. As to the intention of the Legislature with respect to the former, there can be no doubt. The variation, by the septennial average price of corn, of the amount receivable by the rent-charge owner, was so ordered, not to meet any question of the amount or value of produce to the producer,

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<sup>1</sup> "Land Rental," p. 26.

but solely and distinctly to ensure to the owner of the new rent-charge property, in part consideration of the heavy sacrifices of his tithe property to the landowner, an income always commensurate with the purchasing power of money, which it was supposed (however erroneously and detrimentally to the new owner) would always vary as the price of corn. In introducing the Commutation Bill, Lord John Russell said: "Thus the titheowner would be entitled to receive every year payment according to the fluctuations in the value of grain, which would be taken to represent the fluctuations in the value of money."<sup>1</sup> And the Poor Law Commissioners' Report on Local Taxation, 1843, bearing Sir G. Cornwall Lewis's signature, says: "It was quite clearly understood at the passing of the Commutation Act, that there was to be assured to the titheowners an income as nearly as possible equivalent in real value to their then revenue, to be rendered by the provisions as to averages independent, as far as possible, even of fluctuations in the value of money. *With this assurance* of a certain value, the titheowner abandoned his prospect of increased revenue from improving cultivation and rising prices of produce."<sup>2</sup>

If there could remain any room for dispute upon the subject, it has been effectually removed by the publication of extracts from a very important and interesting letter quite recently (October 7th) written by Earl Grey, an active member, as Lord Howick, of Lord Melbourne's Government, to Lord Halifax. His lordship on this point writes:

The principle of the Tithe Commutation Act was that a permanent rent-charge, determined by the actual payments of the preceding seven years, was to be fixed upon the land, not to be subject either to increase or diminution. The variation of the payment according to the seven years' average price of corn was not meant to provide for varying the amount of the payment according to the varying value of the crops (for, if this had been intended, the payment would have been regulated according to the annual value of corn not according to its value on the average of seven years), but to guard against the loss the Church might sustain by a depreciation of the currency. . . . It was also believed that, by taking the average value of corn for periods of seven years, the variations of price from good and bad harvests would be to a great extent got rid of, and that a tolerably certain measure of value would be obtained.

Having been one of the Committee of Cabinet by which the Tithe Commutation Act was settled, and the person who chiefly communicated with Mr. Jones, its author, on behalf of the Government, I can testify that this was the object with which the seven years' average of corn was made to regulate the amount of rent-charge, and that what was intended was to make the amount of that charge as nearly uniform as possible.

Now, in the seven years ending 1880, living expenses

<sup>1</sup> Hansard, xxxi. 195.

<sup>2</sup> Folio ed., p. 10; 8vo. ed., p. 175.

<sup>3</sup> *National Church*, December, 1887. Especial thanks are due to Earl Grey and Lord Halifax for allowing these extracts to be published.

averaged quite 25 per cent. higher than at the Commutation, while the gross tithe rent-charge receivable averaged under 12 per cent. higher. In 1886 living expenses were about 9 per cent. above, while tithe rent-charge was 9 per cent. below, the value of 1836.<sup>1</sup> There has thus been always a heavy loss, whether tithe rent-charge has been high or low. Contrary to the expectation and intention of the framers of the Commutation, the value of corn has never represented, and now less than ever represents, either the value of all farm produce merged in it, or the purchasing power of gold.

2. With regard to the latter condition, what was the assurance? Lord John Russell, in introducing the Bill, said: "I propose, as Lord Althorp proposed, that the owner of the land should stand to the tenant, not only in the situation of the landlord, but *also in that of the titheowner*. The income of the clergy would ultimately flow from the landowner, and *not from each tenant or farmer*."<sup>2</sup> Mr. Cutlar Fergusson, a member of the Government, further explained:

*The tenant will no longer be liable to be applied to for the payment of this charge, and the clergyman will have the great advantage afforded him by the liability of the landlord. The landlord is bound to pay the full amount of whatever demand the clergyman becomes entitled to, although not being able perhaps to collect that amount from the tenant. With regard to the clergyman, in addition to his having the security of the landlord, is it not an advantage to him to be able to collect his tithe at once, instead of having to go among a hundred or a thousand miserable people?*<sup>3</sup>

The means by which this was to be carried out was as follows:

By the Commutation Act (§ 37), in award cases in which the tithe had been taken in kind, the Commissioners were, after estimating the whole average value, to make all just deductions on account of the expenses of collecting, preparing for sale, and marketing the tithe produce; such deductions being assumed to have been already made in all cases of compositions and agreements. The evidence of numerous land-valuers proves this allowance to have been 25 per cent. In the Commutation Bill, as introduced, this allowance was definitely made. 75 per cent. was fixed as the maximum fair money value to the titheowner. For the 25 per cent. represented, not what the cost of such collection and conversion would be to the producer, but the cost to the titheowner. The actual cost to the farmer was only from 10 to 15 per cent., the difference being so much gain to him.<sup>4</sup> The evidence of the Tithe Commissioners, supported by that of the land-valuers, shows that the whole actual amount of tithe rent-charge substituted did not exceed 60 per

<sup>1</sup> "Fluctuations of Prices," pp. 8, 15.

<sup>3</sup> "Mirror of Parliament," i. 263.

<sup>2</sup> Hansard, xxxi. 185.

<sup>4</sup> "Land Rental," p. 9.

cent. (more as regards the impropiator, less as regards the parson<sup>1</sup>) of the gross value of the tithes. The 25 per cent. for collection having been thus allowed off, with 15 per cent. average loss besides, the full residual rent-charge, free of any further collection expenses to him, was made "*payable*" to the titheowner by two half-yearly payments, to be paid "*on the 1st day of July and the 1st day of January in every year*" (§ 67). "*For the payment*" of that sum the landowners "*executed an agreement*" (§ 17), or else, when no agreement was come to, the Commissioners "*awarded the total sum to be paid*" (§ 36). Such agreement (§ 17) or award (§ 52) was to be "*binding on all persons interested in the said lands or tithes,*" and that "*rent-charge to be paid as a permanent commutation of the tithes*" (§§ 37, 38). And, "*in case the said rent-charge shall at any time be in arrear and unpaid for the space of twenty-one days,*" the titheowner was to pay himself; first, by taking its amount out of the existing produce (§ 81) as belonging to him and not to the landowner; and then, if he should fail to find sufficient produce, by obtaining the full amount of it, together with *all costs*, from such produce as he could himself make to "*issue out of the land*" by his own cultivation of it (§ 82).

The landowner can have no sort of grievance at this, first, because the titheowner's rights to so much of the produce were, and the tithe rent-charge owner's rights now are, always anterior to his own rights to residual rent, or to produce *ultra* the tithe or tithe rent-charge; and secondly, because the amount to be paid was settled in the majority of cases by his own or his predecessor's agreement, and in the remainder by the judicial award of the Commissioners, in all cases under the terms of the Act as to dates of payment. And his compensation was enormous; while, on the faith of that settlement, something like a tenth of all the titheable lands, and no inconsiderable amount of impropriate tithe rent-charge, have been sold and bought in the interval since.

It is thus obviously incumbent upon the landowner to make arrangements for the payment of the rent-charge *when payable*; either *ipsissimis manibus*, or by his agent-tenant. If he fail to do so, the penalty he suffers is, that he loses *pro tem*, possession of his land.<sup>1</sup> When the land is farmed out, the tenant, if, to keep off the entering titheowner,<sup>2</sup> he pays the money, is entitled by Section 80 of the Act, *in every case* to deduct whatever amount he pays from the rent payable to his

<sup>1</sup> "Land Rental," p. 13.

<sup>2</sup> "Tolls are like tithes or tithe rent-charge, which must be paid to prevent the titheowner from entering."—Justice Byles in Mersey Docks case.

landlord, exactly as he does property-tax or land-tax. "The titheowner cannot recover in a civil action; he cannot bring an action against the tenant. What are we to infer from that? That it was the intention of the Legislature that all land should be let tithe-free."<sup>1</sup> Every rent, therefore, agreed upon subsequently to the Commutation was, in the eye of the Act, a gross render inclusive of the tithe rent-charge; for, if not, he could not be always entitled to deduct the rent-charge from it. It was thus distinctly fixed upon the landlord as a sum ultimately payable by him, and, if primarily paid by the tenant, only as his agent. The tenant can have no grievance, unless of his own making, because if he has engaged with his landlord to pay the money for him, he has nothing to do but to pay it, and deduct it, just as he does the taxes which no tenant complains of. It is his own fault and his own folly, if he agrees with the landlord to give up his rights under the Act, to undertake the risks of fluctuations of the rent-charge, and to pay a net rent from which he cannot deduct the amount. His choosing to do so can give him no moral, nor commercial, claim to a grievance, in that he is compelled to pay in full, and on the days specified by the Act, what on such days he has voluntarily undertaken to pay. The titheowner was no party to the bargain he has made with the landlord, and to the latter, and not to him, he must look to rescind or vary the bargain.

In a great many instances the tithe rent-charge is actually paid, either by the landowner or his tenant, without putting the titheowner to any additional expense, and with punctuality. But in no case is it incumbent upon the titheowner to collect, or ask for the money, or to give any notice to anybody that it is due. It is not, legally, *collectible* at all; it is *payable*. He cannot even legally claim or collect it from anybody, because nobody, neither landowner nor tenant, is "personally liable to the payment" (§ 67). Nevertheless, on the other hand, if the landlord does not make effectual arrangements in some manner, and in any manner he pleases, for its being actually so paid, he can only be regarded as a defaulter. If the money is not paid by the landowner, or by somebody for him, within three weeks' grace, the titheowner, under the Act, takes it forcibly. The landowner has no ground whatever for claiming three months for payment. He has none for claiming 5 per cent. or any other percentage

<sup>1</sup> Mr. H. Tretheny, of Silsoe, Amptill, at Central Farmers' Club, 14th March, 1881. He adds, "I beg to state that it is the interest of the landowners—I speak as an agent having a large practice in various counties in England, and I say it is the interest of the landowners to let all lands tithe-free."

for paying punctually. He is already bound by the Act so to pay it, or to see it so paid. Lord Salisbury's Bill of 1887 does not increase his liability one whit, for, as Lord John Russell and Mr. Cutlar Fergusson said, he is already liable to pay in full. The Bill does nothing but oust the titheowner from his right to take, in ordinary cases, the produce which belongs to him, and gives him, instead, a power of recovery by action, even retaining to him the ultimate remedy of taking possession of the lands. Either process simply intends to compel the landowner to do the duty which he undertook, as part of the Commutation contract, when he purchased or inherited his property. The enforcement of the eighty-eighth, or deduction section, as in the case of property-tax and land-tax, with a simple remedy through the County Court, would have secured the result with less trouble and more effectually.

No doubt, in practice, the titheowner does most commonly remind the person, whether landowner or his agent-tenant, who holds himself out to be the tithepayer, of the amount due under the averages, and perhaps proposes a particular day to receive it, or perhaps he sends a collector to receive it for him. But this is purely a matter of convenience and courtesy to the tithepayer. And it is only done, or necessary to be done, when and because the landowner has failed to pay up, or make arrangements that it shall be paid up, *when payable*. Whatever expense is thus incurred to save the unpleasantness to the tenant of having immediate recourse to distraint, is thrown upon the titheowner by the landowner's action. It is bad enough that he should have been subjected to such an expense at all in any year, still more in a series of years; but how can it be fair that in a redemption, or in any re-arrangement, any such sum should be *permanently deducted from his income*?

What has the titheowner, lay or cleric, done—in what has he neglected his duty, or failed in his part of the contract, that the Commutation settlement requiring the money to be paid in full on a fixed day, should be reversed to his detriment, *instead of being enforced to his relief*? Why, after the heavy transferences of his tithe property to the landowner—why, after the latter has been allowed (what is admitted to have been a beneficial allowance) 25 per cent. for collection and conversion into money of the tithe produce, so as to enable him to pay the proceeds on the days appointed—why should the titheowner now be further victimized for his further benefit?

“Why,” asked Lord Bramwell, with respect to a similar provision in Lord Stanhope's Bill in 1883—“why should the

gentlemen of England be allowed discount for paying their bills properly?"

Even this is not all. To give the landowner a discount bonus for having unjustly imposed this expense upon the titheowner is unreasonable enough. But there is rather more than this. The matter ought to stand the other way. The titheowner cannot do what the tradesman does, and add on 5 per cent. to his prices, to take it off again as discount on prompt payment. Instead of giving discount to the landowner for paying punctually according to the Act, or within three months, the titheowner ought to receive interest for his loss by any delays of payment beyond the day when legally payable. Be a single day in paying a loan instalment to the Loan Commissioners, and see if they do not insist upon interest for that day. You will not get even the commercial three days' grace. If money is withheld by the landowner or by his agent-tenant, it is because it is of profit in his hands. By just so much is it of loss to the titheowner from whom it is dishonestly withheld. Tithe rent-charge is his means of paying his living expenses. Will his butcher and baker and grocer and coal-dealer wait for three months without taking interest, by piling it in some way on their charges? Is it fair that, if paid his rent-charge so long after due—for, of course, it will be paid only on the ninetieth day, at the very extremity of the three months—a single day will save the 5 per cent.—the titheowner should have to pay both discount to the landowner, and also interest to the tradesmen for the delay?

The whole behaviour of the defaulting landowners has been so signally unjust in imposing this tax, or allowing their tenants to impose it, upon the clergy, and now in seeking to convert it into a permanent bonus to themselves, that it is hard to understand how, as Lord Bramwell says, the gentlemen of England can be parties to it. No doubt a great many have heretofore done it or allowed it unknowingly. And it is a matter of great satisfaction that so many have, immediately on becoming aware of the state of things, at once declared their determination to carry out the intention on which the Commutation Act was passed.

Those who still persist, contrary to the intention and provisions of the Commutation Act, in burdening the titheowners with the cost, or claim compensation for ceasing to do so, or who try to enforce terms of redemption which will induce a further absorption of the titheowners' remaining property into their own, can yet hardly fail to observe how rapid the progress of events which shows that land-rent is as much on its trial as tithe rent-charge; and that, as Sir Robert Peel declared, a process of spoliation which appropriates one property, will



not be long before it effects a retribution in the sacrifice of the other. It might surely be wise, in the coming struggle, for them not, on either or any point, for the sake of a little saving of their own income, to dissociate the titheowners, and especially the clergy, from interesting themselves in contending on their side. It might also be well, too, to remember that it was the extreme Liberals and Nonconformists of the day who, at the Commutation, most clearly foresaw, and whose sense of justice led them most vigorously to protest against, the enhancement of the property of the landowner at the expense of the titheowner, which has proved to be the issue of the Act.

Once more to quote Earl Grey, whose evidence is unimpeachable :

It is very clear that landowners as a body were enormous gainers by making the charge a fixed one. . . . It would therefore be in the highest degree unjust, if, after having so long enjoyed the advantage of a fixed charge, the landowners were now, because times are bad, to ask the titheowner to give up that certainty of income for which he has made so large a concession. We all came into possession of our estates subject to the charge for tithes which had existed for many centuries ; and we have no more right to ask the titheowners to give up to us a part of what belongs to them, than we have to ask our next neighbour for a slice of his estate.

In concluding this article, it is necessary to draw attention to Mr. Bridge's Welsh Report, as failing in one important respect to do justice to the titheowners, and so to leave a very unfair impression as to their case and action. His statement represents very fully the complaints of the tithepayers that, although the landowners have reduced their rents, the titheowners have not reduced their rent-charges. But he gives no similar or equal prominence to the answer, viz., that the tithe rent-charge is, through the corn averages, legally self-adjusting, while the rise or fall in rents is arbitrary. Rents are reduced, too, with reference to the value of the whole farm-produce, which has not fallen as corn has. But the whole farm-produce tenth is merged, for tithe rent-charge, in corn-value only. All the titheowner's eggs are put in one basket. Hence tithe rent-charge is not only more sensitive than rent, but falls, and has fallen, much more rapidly and severely. Between 1878 and 1885 land-rental had in the whole fallen 6 per cent., but tithe rent-charge 16 per cent. It has now (1888) fallen 25 per cent., and however corn prices and rents may revive and rise, must continue to fall to 35 per cent. Thirty cases recorded in the newspapers of rent-remissions have shown an average of 21 per cent. But there is a large extent of land in respect of which no remission is called for or has been made. Suppose, however, a uniform fall in all lands to the same apparent extent

as in tithe rent-charge—25 per cent.—the real fall, in comparison, will be something very different.

For between the Commutation and 1878 the rental of (all) tithable lands rose from £100 to £165; tithe rent-charge to £112 only (showing how much of tithe-produce has gone to augment land-value, for it would have risen, under the tithe system, to at least the same height as land-rental). It is of course true that the rise of 65 per cent. does not apply to a vast number of individual parishes or properties. But, upon the evidence of the property-tax returns, it is true upon the whole. A fall of 25 per cent. upon £165 rental would have brought it down to £124, while the same fall on £112 tithe rent-charge has brought it down to £84. So that rental is still, on the whole, 24 per cent. above, while tithe rent-charge is 16 per cent. below, the central unit of 1836—a difference of 40 per cental. To bring it down to the present level of tithe rent-charge, it would require a reduction, from the rents of 1878, of no less than 49 per cent.

This answer ought in justice to have been emphasized in Mr. Bridge's Report as fully as the tithepayers' complaints. The editorial remarks of the leading newspapers clearly showed that this was not the case, and that the titheowner, because he had not made reductions on the rent-charge receivable, lies, without defence from Mr. Bridge, under the imputation of being less liberal than the landowner.

Thus much on the facts; but of course there remains the further answer, that the titheowner is liable to no reduction, beyond that of the averages, as between the occupier and himself. The occupier undertook all the risks of his tenancy (or, if landowner himself, of his purchase or inheritance), and it is with the landlord (or, if landowner, with his predecessor in title) that he must, if he can, settle, if his risks have been miscalculated.

C. A. STEVENS.

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## ART. II.—HADES.

**W**HAT is Hades? From the Homily on Prayer I make the following extracts: "The Scripture doth acknowledge but two places after this life, the one proper to the elect and blessed of God." "St. Augustine doth only acknowledge two places after this life, heaven and hell. As for the third place, he doth plainly deny that there is any such to be found in all Scripture." After quoting certain passages of the Scriptures,