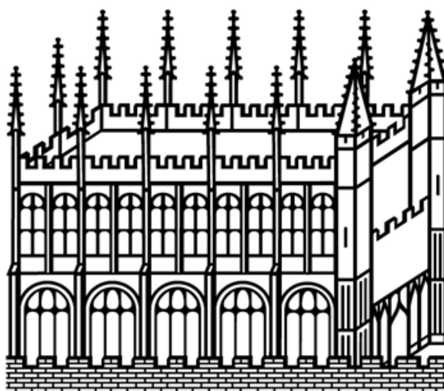

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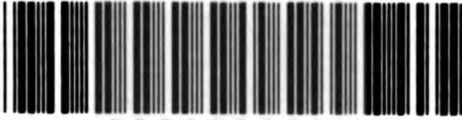
Müller

1831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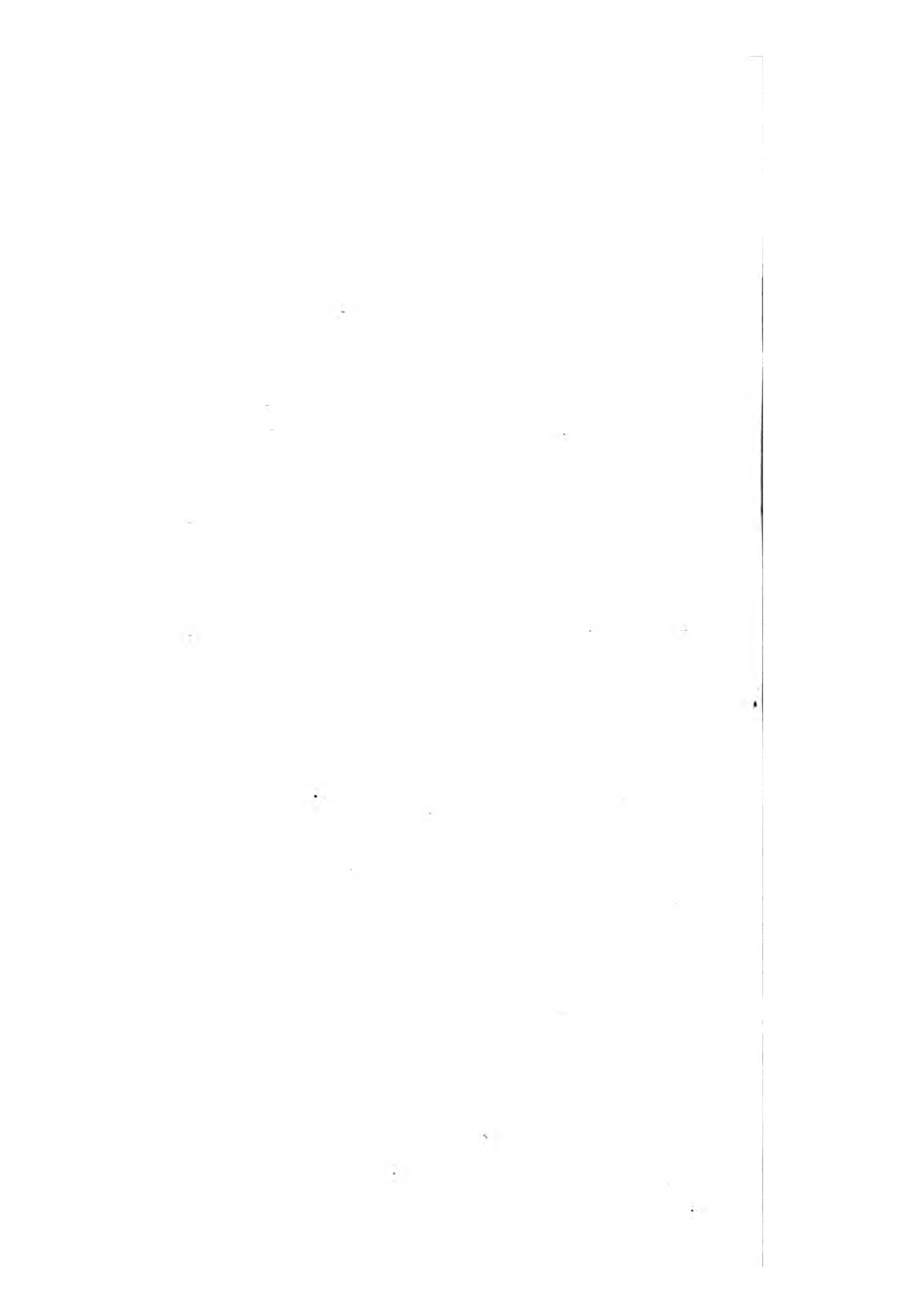
A LETTER,

&c. &c.



E. J. H. 1831

A LETTER

TO THE

RIGHT HON. LORD TENTERDEN,

Lord Chief Justice of the King's Bench, &c. &c. &c.,

ON THE

PROPOSED

LIMITATION OF LEGAL MEMORY

CONNECTED WITH THE

CLAIMS OF THE CHURCH.

BY THE REV. J. MILLER, M. A.,

VICAR OF PITTINGTON, DURHAM.

SECOND EDITION.

LONDON:
HATCHARD AND SON; AND ANDREWS, DURHAM.

1831.

526.

DURHAM: PRINTED BY F. HUMBLE.

A LETTER,

&c. &c.

MY LORD,

I perceive that your Lordship is engaged in forwarding a Bill through the House of Peers—one object of which is to limit the period of legal memory, with respect to the Claims of the Church; and I, in common with every other man, on whatever side his interest may lie, rejoice most sincerely that this, or any other similar measure, is to be conducted under your Lordship's direction. You are acknowledged to be most friendly to our Church establishment—the purity of your intentions is above all suspicion—and your legal experience, and discriminating powers of mind are such as to warrant the most unbounded confidence. I wish to acknowledge one quality more, which chiefly encourages me to address you, viz., the patient candour with which, I am quite sure, your Lordship will attend to every consideration and reason—not for the sake of its Author, but of its intrinsic worth.

With regard to general approbation, I am under very little alarm. I have already, in a Letter to Earl Grey, stated my opinions and plans of improvement as to Church property and preferments in general. My object, in that Letter, was to deal liberally and fairly; and I have no doubt that such of the public as have seen it will agree with me, in the greatest part of what I have said: if, therefore, any reader should now look only on *one* side—if he approve of reasons, because they happen to accord with his own pre-conceived notions; and condemn others, merely because they oppose his views or his interest, I can the better afford to incur all his hostility. The well-judging and well-intending public will, like your Lordship, treat me with candour; and I have no intention of writing a single line for the approbation of persons of an opposite description.

It will not, I hope, be deemed presumptuous in me to address your Lordship on the present occasion: for although the Bill now introduced has the sanction of your Lordship's name, yet is it founded on the "Reports" of Law Commissioners, which Reports, again, are manifestly founded on the answers given by certain Lawyers. And I must be allowed, with all due deference to the Bar in general, to contend, that any ordinary Clergyman has better opportunities of forming a correct judgment, on some of the points which these answers embrace, than all the learned authors of them taken together. When I thus express myself, I beg it to be understood that I have the greatest respect for the Bar as a profession, and for many individuals belonging to it, as men of emi-

nent ability and learning—but it were gross flattery, if I said that more than a tithe of the profession know much about the subject of "Tithes," or that more than one-tenth of that tithing are men of distinguished talent and acquirements.

My Lord, not only do I respect the Bar; but, if I were susceptible of such a feeling, I should even envy the gentlemen who are called to it—for whilst every unfortunate Clergyman is exposed to a *valorous* attack from men, who can shrewdly distinguish when they are in personal jeopardy, and when they are safe, forbearance, and a due share of consideration are exercised towards a Lawyer. If a body of Clergy united in presenting the expression of their sentiments, they would probably be met with only a Kingly—I do not mean to say, a royal, or even a good or a witty jest—whilst, on the other hand, a similar proceeding, on the part of the "Bar," would be regarded as a judgment pronounced—nay, even "learned" gentlemen in pin-afores may sometimes forsake their nursery pursuits, erect themselves into a little thinking community, and be received with all the deference and respect, which once belonged to the Senators of Rome.

But, my Lord, I have no complaint to make against the Commissioners for having taken the opinions of all the members of their own profession, upon the subject of Ecclesiastical prescriptions. Nothing was more natural, than that Lawyers should take the opinions of their brethren of the law—nothing was more natural than that those, who had little employment in their own line, should be lengthy, and wish

to appear learned in making out their Returns; and, perhaps, nothing is more desirable for the community at large to know than that there exists, at this day, in Newcastle, a whole sheaf of "northern lights," which promises to coruscate to the illumination and astonishment of a benighted world. But what I have to complain of is—that answers were not also required from the Clergy—that, whilst the opinions of the *Bishops* were taken, *Incumbents*, who have greater personal experience, and whose interests are as deeply involved, have not been deemed capable of answering a few simple questions, or worthy of any consideration if their opinions were obtained—and, therefore, I feel myself perfectly entitled to take the only course, which remains open to me, of examining into the soundness of those "Answers," on which the Report of the Commissioners, and, consequently, the present Bill are founded.

In my Letter to Earl Grey, the question of prescription, in matters affecting Church property, came as it were only incidentally in my way, and therefore received very little of my attention. I will now, however, enter more fully into it—in the hope that, if I fail to bring forward considerations sufficient to induce your Lordship to admit very material alterations in the proposed Bill, if not to withdraw, for the present, that portion of it which affects the property of the Church, I may at least succeed in drawing out such preponderating arguments on the other side as ought to convince me, and every one of equally limited information, that it is the best devised, as it now stands, for the good of the Church—if it does not

even go further, and confer a benefit upon us, at a probable sacrifice on the part of the proprietor.

As the Bill does not suggest any particular arrangement of my remarks, I propose to adopt that which the " Answers" of the Lawyers, and the arguments employed in support of the measure seem to point out. But I must be excused from paying any regard to the laws of the Romans respecting prescriptions, in this our year 1831—or to the "Landrechts" of Prussia, the Netherlands, and Bavaria—the "Siete Partidas" of Spain—or the "Gesetzbuch" of Austria—those appalling Authorities of Mr. Cooper, or to the Code Napoleon of Mr. Butler. And my reason, my Lord, is simply this—that all these Collections or Digests of Laws originated in communities in every way differing from ours—some of them belonged to States of too ancient periods, and perpetually introducing changes in their Constitutions—some to kingdoms too dark, in themselves, to afford any other light than perhaps now and then a moral lesson to England—and with respect to the Code Napoleon, it might have occurred to Mr. Butler that, under all the circumstances of the case, there could have been no earthly use in fixing upon a longer period than thirty years; for, within that space of time, every thing had been overturned by the Revolution—and owing to the new mode of paying the Clergy, and maintaining public Institutions, it would have been of very little consequence if the period of limitations had been still further shortened. With the exceptions of Mr. Barnes, Mr. Addison, and Mr. Jones, all those, who have either made written communications, or been ex-

amined before the Commissioners, appear to be of one way of thinking on the subject—they differ, however, materially as to the length of the period, and many of them give no reason whatever for the opinions they have formed.

As far as I am able to collect from the answers obtained, it appears to me that the reasons alleged for the proposed change may be reduced under the two following Heads :—

1. A Limitation of the Claims of the Church to sixty years would be attended with much advantage to the Proprietors of lands—for, as the Law now is, a doubt often exists as to the validity of a modus, which produces a feeling of insecurity in the mind of the Landowner, and, by affecting the Title, tends to impede the transfer of Estates by sale—and the maxim, nullum tempus occurrit Ecclesiæ, is iniquitous in principle; because the Title of the Church is every day improving, whilst that of the protection from the payment of tithes is getting worse—and

2. The proposed change will really benefit the Church—for it will prevent litigation, and by necessary consequence save many a poor Clergyman from involving himself in ruinous expense, and remove the existing cause of the unpopularity of the Church, and of dissent from her communion—and the contemplated change will tend to preserve to the Clergy "the property which now remains to them."

My Lord, these are tempting considerations—they *promise* a great, a very great deal. But as we live in plausibly promising times, when promises are kept to the ear, your Lordship will forgive me, if I take the

liberty of examining a little into the probability there is that they will, in fact, be realized.

1. A Limitation of the Claims of the Church would be attended with much advantage to the Proprietors of lands.

This, my Lord, is a most undoubted truth; and, as the greater part of those who have returned answers are themselves Landowners, and the others Law-agents of Proprietors, the proposal comes from them in a peculiarly modest and disinterested shape. It would be greatly to the advantage of owners of estates, if a portion of Church property were conveyed to them—for, however disguised it may be, this is really the substance of the proposal—and if an inclined plane were devised, by which other portions might slide away in the same direction. I trust, I need not say that I consider your Lordship as the last man, who would sanction any measure likely to be attended with such effects. I regard the proposed Bill as the natural consequence of the number, if not the weight of authorities, by which it is recommended; and I beg, once for all, that I may be understood as opposing *them*, and not your Lordship.

But the present state of the law of Tithes is said to produce a feeling of insecurity in the mind of the landowner, and to impede the transfer of estates by sale. My Lord, I am strangely tempted to put in a demurrer here; but as this reason for the limitation implies a fact, which must be better known to Lawyers than to me, I will pay the same deference to their statements respecting it, which I intend to claim from them in return, when I come to speak of *other* facts,

of which I must possess a better knowledge than they can possibly have. As, however, they have given confident opinions upon matters which lie very little in their way, I may be allowed simply to state the impression upon my mind respecting the alleged fact of which I am now speaking—until I saw the Appendix to the Commissioners' Report. That impression, my Lord, certainly *was*—that the insecurity, as to the validity of moduses, presented no such difficulty in point of practice—that the title to the *estate* could not be thereby affected, but only the title to a collateral relief—that the value of such relief was seldom demanded or paid, in the transfer of lands by sale—that the best Conveyancers and most extensively employed Attorneys disapproved of a security, on the one hand, or of a payment in respect of the prescriptive relief, on the other—that consequently the disappointment sometimes experienced by the purchaser of an estate, who hoped that a reputed modus would have continued, is not unlike the disappointment of him who expected to have discovered a lead or coal mine, without having paid any consideration for the imaginary treasure—and that, even if cases have occurred of an opposite nature, they would be found to have been comparatively rare. But although I was justified in this opinion by instances which came within my own knowledge, and by information, which I received from men of greater experience, I readily admit that my opinion in this matter is of no consequence whatever, in comparison with that of Mr. Tyrrell and others. There is one remark, however, which I am competent to make, viz., that the asser-

tion, respecting the harm occasioned to the land-owner by the privilege of the Church, is too broadly stated —for a large portion of the lands in England has not passed through any sale whatever in modern times—a very large portion, indeed by far the greater part is subject to the payment of Tithes in kind—and nearly one-third of the existing moduses are not due to the Church, but to Lay impropriators. Besides moduses very seldom cover *corn*-tithe, but only *hay* or *milk*, or *lamb* and *wool*, or some species of *small* Tithes; and, therefore, when an extensive property is for sale, no consideration is given to a modus extending only to *a part*, or a modus for certain descriptions of small Tithes, even if it extend over the whole estate—and although, in a very *few* instances, a question as to the validity of a modus may be made the *excuse* for non-fulfilment, yet the *true* cause is, that the purchasing party has begun to discover that he is about to conclude a bargain, which on *other* accounts is undesirable. Upon the whole, I cannot see that the privilege enjoyed by the Church is likely to affect many sales, and certainly not so many as to justify the very great stress, which has been laid upon it, as an objectionable part of the present Law.

Again, it is said that a limitation must be put to the claims of the Church—because the Title of the Clergy improves with time, whilst that of the owner of the estate to the protection is daily getting worse. My Lord, I know enough of Tithe-law to be able to give this assertion the most unqualified contradiction; and I do affirm that it is the *Landowner's* title, and *not* that of *the Church*, which improves with time.

The Common-law right of the Rector, and the endowment of the Vicar, (either expressed or from circumstances to be inferred,) are all the advantages which, according to the present law, are peculiar to the church—but these convey only the *Title*—they have no effect whatever upon a *modus*, which is held to be a legal rendering of Tithes; and it is, therefore, absurd to say that time improves the Title of the Church. But a reason is attempted to be given in the Appendix for the assertion, and a strange enough one it is—that there may have been a *Composition real*, which, like other ancient documents, may have perished, or its existence have become unknown to a modern proprietor. Is there, then, my Lord, an intuitive knowledge, confined to Clergymen, of the existence and lurking-places of documents?—Is there some property in the ink and skins or paper, used by the Clergy, of a peculiarly imperishable nature, or a principle of vital re-productiveness in *their* writings, which enables them periodically to throw off fac-similes of themselves—for how otherwise are these, any more than *other* writings, unlikely to perish? Those Gentlemen ought to have known, at the very moment when they were writing, that if an ancient *composition* had been the origin of any existing modus, such fixed payment would, generally speaking, be more easily established upon subsequent evidence, as a *modus*—than as a *composition real*, on the production of the original deed—for such deed would immediately be subjected to a severe scrutiny; and from all we know of existing documents of that nature, it would, in general, be destructive of the pro-

tecting claim, owing to some informality attending it. Such documents, although they gave rise to many payments, which are continued to this day, were very rarely indeed any thing more than a composition between the Incumbent and a Proprietor; sometimes the patron was a party, especially if he had lands in the parish, but the ordinary seldom was. The proprietor is, therefore, a gainer by the presumption, which the law, as it now stands, allows in favour of a modus—and every Attorney's Clerk can tell a Client that no safer ground of defence can be taken.

If we consider what are the documents, which come down to the two parties, the Incumbent and the Proprietor, and the different circumstances which attend their transmission, we shall find it extremely difficult to divine what those legal respondents meant, when they affirmed that the title of the Church *improved,* whilst that of a protection from tithes was *weakened* by time. For myself, I am inclined to suspect that they had no meaning at all—but I will, nevertheless, give their case the benefit of a fair trial.

I will suppose, then, that a payment, in lieu of Tithes, has subsisted so long, that many documents, which might have thrown light upon its origin, are likely to have perished—does the title to the *protecting payment* become more doubtful by such antiquity, whilst that of the Clergyman to tithes in kind improves ?—and would the title to the protection have been comparatively stronger, if the origin of the payment had been more modern ? A modus is the defence—and there is not an advantage, or a class of evidences in support of the Clergyman's claim, which

is not greatly overbalanced by corresponding advantages and evidences on the other side. Has the Church the privilege of bringing forward proof from any period since the time of Richard I., and may not the Laity do the same thing, in support of a modus? The great public offices, where documents are preserved, are as open to the one party as the other. Does the Bill set forth the plaintiff's title?—the answer upon oath is sufficient to meet it on the part of the defendant. Are Predecessors' books admitted?—so are those of Stewards in favour of the protection. Are Terriers referred to?—so may Terriers be, on the other side. Are ancient surveys used?—these can seldom be made to affect a modus; and if they could, little or no credit is given to them—but bargains of sale, and old receipts may be used, with effect, on the other side. Are former trials, if they have taken place, liable to be produced by the plaintiff?—they may be equally useful to the defendant. And, in general, if no time run against the Church, no time, on the other hand, runs against the length of presumption founded on living testimony. This is the great advantage which always belongs to the defence. A few living witnesses, even if their perfect recollections had not returned to them till the day before their examination, are presumed to tell the only true story of the days of Richard the First—and every document on the part of the plaintiff is explained away or softened down, and every evidence of the defendant is interpreted and strengthened, so that the tale of these old people, and it alone, may be the true one at last. Again—if the modus had been of

modern origin, the chance is, that terriers, and predecessors' books, would have been, as I have classed them, decidedly *unfavorable* to its validity; and that there would have been almost nothing in the shape of evidence on the other side. But if the modus had been of one hundred and fifty years standing, there is no doubt whatever that, in some one terrier, Incumbent's book, or receipt, it would have been so recognized—if it had been still a century older, such, to a certainty, would have been the case in many terriers, &c.—and your Lordship knows well the weight, which Courts of Law and Equity uniformly give to a single admission of a modus by an old Incumbent. In proportion, then, as the reputed modus is ancient, those classes of evidence, upon which the Clergyman naturally depends, become *unfavorable* to him; and he is thrown still farther back into periods, the documents belonging to which are much more likely to have perished on his side than on the other —for how very differently are the situations of the two parties calculated for the safe transmission of documents? The landowner has a permanent—the Incumbent only a life, interest; the former has a *natural* inducement to preserve evidence for his heir—the latter stands in no such relation to *his* successor; the heir of a property enters immediately into possession—the succeeding Incumbent not until some months have elapsed; the new proprietor has a right to all the papers of his predecessor, and it is hardly possible that any of them should be lost or destroyed, in passing from the one to the other—but the papers of the preceding Incumbent belong to his family, who

may destroy, detain, or deliver them up to the adverse party. In direct opposition, therefore, to the learned opinions, which accompany the Commissioners' Report, I do not for one moment hesitate to repeat, what I have already affirmed, that the present law is favorable to the finding of a modus; and that the title to such protection, from the payment of Tithes, improves every day to the disadvantage of the Church —and I appeal the case, with great confidence, to your Lordship, notwithstanding the number of the authorities opposed to me.

But it may be asked here—is it not plain, from the statements and reasonings on both sides, that an *evil exists,* which calls for *the remedy proposed by the Bill?* The gentlemen, who have expressed their opinions, have certainly found it a very easy matter to say that such a remedy is highly proper. But, my Lord, I have the misfortune not to be able to perceive any legitimate connexion there is, between the *evil* and the *remedy.* I agree with them most readily, that there is a case for the Legislature—but, then, the *evil* is one of *law-proceedings;* and the *remedy* proposed is to *take away* a *right* altogether. Now, this remedy, I grant, has the merit of being a summary mode of settling disputes. It has been no unusual observation, that if a large sum of money once got into Chancery, not more than *two-thirds* had any chance of getting out of it again; and the dread of a total absorption frequently led parties, in the end, to an amicable division. But a new principle might be introduced, in accordance with the spirit of the legal Appendix, which would speedily reduce the arrears of business

in that expensive Court, and, at the same time, remove every ground of quarrel between the parties—*take away* the *right* at once, and *keep* the *whole* sum. And such a plan is, by no means, without its authorities; for it would be one way of following up Jupiter's surgical rule—

——— immedicabile vulnus
Ense recidendum—

and in perfect harmony with the "prescription" given in one of our English plays, as the last effectual "remedy" for a head-ach,—

"Cut off the head."

But, my Lord, if the alleged evil, in the case of moduses, can only be remedied by depriving a party of a right altogether, I beg to remind your Lordship that here there are *two* parties, enjoying *conflicting* rights. Why, then, has it not occurred to "learned" gentlemen to propose the taking of the right from the *opposite* party? If a plan to this effect had been suggested to them, I have no doubt whatever that we should have had the fable of the Lawyer's decision, about the dead ox, in the case between him and the farmer, exemplified to the very letter—things would instantly have been changed, and the old half-hudibrastic saying adopted in the south, which is common in Scotland—

In Edinbro' the legal phrase is—
"Circumstances alter cases,"

—a new light would have broken in upon the Bar; and it would have been discovered that frequency of suits, and enormity of expense, and necessarily inherent ignorance in poor Clients formed no rational

ground of objection to the *right itself*, but only to the *mode of proceeding*, by which alone such right can at present be established; and we should have had a recommendation, not that the right ought to be taken away, but only that some more speedy and cheaper process should be devised, to ascertain its existence, and give it effect.

Your Lordship, I trust, will not believe that I have any serious intention of proposing that the Land-owners should be deprived of the protection, which they enjoy from moduses and prescriptions. I am merely desirous of exposing the absurd haste, with which sensible men sometimes arrive at conclusions *per saltum*, and of showing them that they have actually accomplished a much greater feat, than if they had taken the other leap, which lay equally in their way.

It would, perhaps, materially diminish the regrets of some gentlemen, who seem to fancy that the Church has been making rapid encroachments upon the good old privileges of landed proprietors, if they could be induced to believe—what is really not far from the truth—that, not more than *one* in *three hundred* of the reputed moduses in England, is so old as the time of the Dissolution; and yet, if they were all brought into Court, that *nine* out of *ten* would be declared to be good in law and valid—notwithstanding the advantage, which the Church possesses, of proving back to the reign of Richard the First. I regret that I have not, for this purpose, the published opinions of the most experienced Equity-Lawyers, to which I might refer as authorities. Your

Lordship requires no such opinions; but the public, and many of the correspondents of the Law Commissioners evidently do stand in need of them; and, therefore, it would have been desirable, if a question had been put to men of the greatest experience in Equity, with the view of drawing answers from them respecting the probable antiquity of moduses in general. I will venture to say, that if Mr. Bell, for instance, had been asked for his opinion of this matter, he would have said that he had been consulted in a very great number of Tithe Causes, but that he never saw evidence of a modus, which led him to believe that it had originated before the time of the Commonwealth: and, perhaps, he would have accounted for the number, which seemed to have arisen about that period, in the following manner—the Clergy rejoiced to find themselves re-established; and were contented to receive, during their Incumbencies, the same sums which had been paid for Tithes during the last years of the Commonwealth; their next successors required no great inducement to continue the receipt of the same payments—and, hence, they have descended to us with the venerable air of moduses, or immemorial prescriptions. I do not presume to say, that Mr. Bell would have used these precise words; but I have no doubt that such is substantially his opinion, as well as the opinion of many others of the most extensive experience.

As the origin and history of moduses are imperfectly understood, and a certain knowledge of them is necessary, in order that they may be fairly dealt with in any new Legislative enactment, I will go a

little more particularly into the subject. I affirm, then, that comparatively few of the existing payments in lieu of Tithes are older than the time of the Commonwealth; and as a primâ facie-ground of presumption that my opinion is correct, I request that the following calculations may be resorted to in every case to which they can be fairly applied. Whenever a modus exists for *all* the Tithes of a parish, let the amount of such modus be compared with the Valor of Henry VIII., and also with Cromwell's survey, and it will be found not to agree with the former, but with the latter. And, again, if the modus be for *one species* of Tithes throughout a parish, let the whole value of the Tithes, temp. Hen. VIII.—the sum contained in his survey, as the value of the specific Tithe covered by the reputed modus, and the whole amount of the Tithes according to Cromwell's Survey, be taken; and then, it will generally appear, that as the whole value, temp. Hen. VIII. is to the whole value, during the Commonwealth; so will the value of the specific Tithe, temp. Hen. VIII. be, to the present reputed modus for the same Tithe; and, hence, it will follow that the origin of such reputed modus really belongs to the period of the Commonwealth. No objection against this mode of calculation can justly be founded upon a remark, usually made, that the Valor Eccles. of Hen. VIII. is far below the *true* value at that time; for when the return is made distributively or specifically, it is fair to conclude that if *one* species be under its real value, the others, and consequently, the entire amount are low in the same proportion—so that the rule I have given is equally good, whether the survey

give the full values or not. My own belief is, that the Survey of Hen. VIII. is, in general cases, very correct, notwithstanding the manner in which it is usually condemned; and those who hold the contrary opinion, may consult Strype's Annals, the other Authors who write of that period, the published State Papers of the time, and especially the Monastic Records of the preceding years—In these last they will find that the actual revenues agree pretty closely with the sums given in the Valor Ecclesiasticus. There are many and sufficient reasons, however, why this mode of calculation ought not to be carried to a great extent. I use it merely, as primâ facie evidence of the case, which I wish to establish.

But how, it will be asked, is it unlikely that moduses should have arisen generally, if not before the time of Richard I., at least in the four hundred and fifty years, which elapsed between his reign and the Commonwealth, as well as *since* the latter period? I believe, my Lord, that some of them did originate before the Dissolution; and that many arose in the time of Elizabeth, and in the two following reigns—although the general commencement of moduses was not until a later period; and I will now endeavour to account for my opinion.

During the 370 years, which elapsed between the commencement of legal memory and the accession of Queen Elizabeth, the change in the relative value of money took place very slowly—for, at the end of that long period, it had only fallen in the ratio of 3 to 1. The increase, therefore, of the value of produce in the course of one, or two, or even three lives, was

not such as to suggest to a party the advantage of establishing a fixed payment, either for lands or Tithes; and the state of the times was peculiarly unfavorable to every arrangement of that kind—Wales, and the adjoining districts of England were unsettled, during the first portion of these 370 years—the whole kingdom was long convulsed by the struggles between the Houses of York and Lancaster—and the North of England, partly owing to the neighbourhood of Scotland, and partly from its own disorganized condition, was in a disturbed state, from the beginning of that period to the end. Nothing, therefore, could appear to an owner, or occupier less desirable, than to charge himself with the payment of a uniform sum, on account of produce or stock, in times when the entire profits of a year were exposed to frequent danger, if not to total destruction. The Monasteries, which were comparatively secure, sometimes entered into beneficial compositions with Incumbents of parishes; and, in a very few instances, Noblemen followed the same practice, with respect to their parks, and portions of their demesnes. But such cases were comparatively rare—a *general inducement* was wanting—and even the Nobles were liable to be called out, on so many occasions, when money and not produce was available, that a *rent*-charge upon their estates was the thing of all others to be avoided. Accordingly, in the Conventual Rolls of the period, which contain abundance of information respecting property of every description, nothing is more unusual than to find entries, which recognize fixed payments in lieu of Tithes.

But in the *one hundred years* which followed from the accession of Elizabeth to the Restoration of Charles II., matters were entirely changed—England was tranquillized, some enclosures were made, improvements in agriculture were introduced, and the relative value of money underwent further changes—so that the income arising from lands or tithes, became in 1660, *three* times as much as it had been at the accession of Elizabeth. We can now perceive an inducement, which proprietors had, to make such arrangements as were likely to end in fixed payments. At the close of a *single Incumbency* (and much more in the experience of one or two lives) an increase would appear to have taken place in the value of tithes, sufficient to render the Landowner desirous of continuing his former agreement; and a renewed bargain at the old rent, upon the payment of a certain sum in hand, was at that time common in all cases. If this last period was favorable for the commencing of future moduses, much more was that which followed likely to produce similar effects—for in the next *sixty* years, lands and tithes again became *tripled* in value. Now, if an Incumbent agreed, in 1660, to take the same sums which had been paid to his predecessor during the Commonwealth (and the circumstances of the Clergy, at the Restoration, were favorable to such agreements) and if men generally agreed for their incumbencies (and we know that they did) then was there every facility which could be desired, for the establishing of a modus. We may presume the average length of the period between the beginning of the *last* incum-

bency of the Commonwealth and the end of the *first* after the Restoration to have been forty years. Tithes during that time must have doubled in value—and, therefore it became an object with the Proprietor to get the *same* payment received by the *new* Incumbent, which had been continued by his predecessor. For this purpose, it was by no means necessary that a sum in hand should be paid, equivalent to the probable loss arising from the difference between the late payment and the real value. Forty years only, it is true, had elapsed, and abundance of living witnesses might have been called—the case might have been as clear as Mr. Tyrrell intends our cases for the future to be—but how was the Incumbent to proceed? The mode generally practised at that time was by libel in the Spiritual Court—two years and a sum of money would have been spent, and the result—a disappointment. The Proprietor had a permanent interest—he could have suggested a *modus*, and brought down a prohibition. The Incumbent was aware of these difficulties, or he must have been informed of them by his Proctor or Attorney—he balances costs and gains, contingencies and certainties—he finds that, as the tithes are only worth *twice* the sum, which is tendered, even success would not indemnify him for the expenses of a suit—he takes the gratuity, usual in all cases at that time, of an extra year's payment, and so things continue—twenty or thirty more years are got over; and every living man is free to swear that he never knew a different sum paid, and that he believes it to be a modus, a prescription, or a good and lawful custom.

My Lord, this is really the period, which alone can be fixed upon for the origin of moduses in general. But when I so express myself, I beg that my Clerical brethren will not imagine that they have only to institute Tithe-suits, and succeed. On the contrary, such latitude is taken in the way of presumption—such is the weight given by Courts of Equity to former decisions—and such, especially, is the want of evidence on the side of the Church, that, as I have already said, moduses will be sustained in *nine* cases out of *ten*. I am speaking, at present, of a Legislative measure,—concerning which, any one may be allowed to reason historically and fairly—and I do maintain, that the period before the reign of Elizabeth was *unfavorable* to the beginning of fixed payments for Tithes—that, in point of fact, comparatively few moduses had then any existence—that they began, in general, during the Commonwealth, and were matured afterwards—that circumstances were then peculiarly favorable to their establishment—that their amount generally corresponds with the then real values—and that evidence generally points to the same period of the Commonwealth, and not to one more ancient, as the time of their commencement. As one case seems to be sufficient, by way of authority, for certain opinions contained in the Appendix, I presume that I ought to give a case, in illustration and support of what I have just said. The Incumbent who was appointed, in 1662, to the Living which I now hold, continued to receive the payments which had been made in respect of Tithes, during the last years of the Commonwealth, and was Vicar *twenty-*

seven years. He was succeeded by his son, who held the Living *twenty-eight* years, and likewise allowed the same payments to be continued. This *latter* Incumbent also left a son, who wanted only a year of the proper age. A friend was presented, held the Living for a single year, and then resigned it, when this third person in regular descent was presented—at the end of whose incumbency, the payments had continued undisturbed for *sixty-eight* years. Now all this happened, not in a case of private patronage, but by the presentations of a Clerical Body; and your Lordship may judge of the extent, to which encroachments are likely to have been made during the same period, and in similar ways, where circumstances were more favorable for such proceedings.

I will now take another view of this subject; and grant, for a moment, that the greatest number of existing moduses are immemorially ancient. Even on this supposition, my Lord, I do not perceive the justice of any recommendation, which should have led to the proposed measure. It is universally acknowledged, that all ancient payments, in lieu of Tithes, must have been for the *benefit of the Church*—they were not the effects of agreements, in which the proprietors were endeavouring to make the best possible prospective bargains for themselves—they were not intended for the present advantage of the Church, and the future advantage of landowners; but it was meant that the Church, and it alone, should gain. From the very nature of things, therefore, no modus should have been suffered to continue when it ceased to be equal to the real value

of the Tithes which it covered. I am well aware, however, that Courts of Equity have decided otherwise, although they have allowed the first intention; and that modern Judges are bound down by precedents and practice. But I have always understood that when the *Legislature* interposed, it did so for the uniform purpose of relieving Judges from the fetters, which time had imposed; and of rectifying the laws and practices which had introduced and promoted error. It is in your quality of Legislator that I now address your Lordship—and relying, as I do, upon your historical knowledge, your legal experience, and your desire of adhering to the principles of strict justice, I think I may, even at this point, ask your Lordship whether it be safe to effect hastily so great a change, as that which is now in contemplation? or, if the rights of one of two parties, the Clergy and the Proprietors, must be sacrificed, whether it be more equitable that all the payments in lieu of Tithes should be established, or that they should all be set aside? These payments are unquestionably not so ancient as they are pretended to be; and they have only attained to their present age, in the faith that the two Houses of Parliament (consisting of men who belong to the class of proprietors) would never turn round upon succeeding Incumbents, and pass an Act for the destruction of their rights—in order that *proprietors* might derive a benefit, to which they were never justly entitled.

The gentlemen who have returned answers to the Commissioners, will probably not altogether approve of the light, in which I have now placed the question

—they will affirm that no new right is to be given to the owners of land; but, on the contrary, that the rights of the Church will be rendered more secure. Is it nothing, then, my Lord, that payments, which might perhaps be set aside, on account of their modern origin, are to be for ever established? Is it nothing, that moduses, now existing, or hereafter to arise, which are *essentially bad* in law, are to be rendered *good?* And is it nothing, if the primâ-facie title of the *Church* to *all Tithes* be taken away, and a primâ-facie title given to *lands* of *a total exemption?* The two former of these questions appear to be of trifling importance in the eyes of those, whose opinions are recorded in the Appendix—but yet they are of some real consequence, in respect of the property which the Bill proposes to alienate—and the last unquestionably requires more consideration than the legal respondents, in general, have bestowed upon it. Some of them coolly propose that the onus probandi should be thrown upon the Church; and others regard that point as a matter of no consequence. Now, I should like to put a case to gentlemen, holding such opinions,—Would it be a matter of any importance, or would it not, if the primâ-facie title to all the *lands* in England, were, by an Act of Parliament, taken from the land-owners, and given to the Church? I have no doubt, my Lord, that these same gentlemen would be horror-struck with the proposal—it would completely "alter the case"—a primâ-facie title would be worth something—it might open a door to encroachment—and we should hear presently of nothing but the boundless ambition of the

Church, which had led her to watch with complacency the progress of the Bill, or the reckless selfishness, which could induce her to accept it.

2nd. *Class of Reasons for the proposed Bill.*

A limitation of the Claims of the Church to sixty years will, it is said, be attended with a benefit to the Church.

My Lord, this sounds exceedingly well : but I am afraid that I must be compelled to differ with those who hold out the plausible inducement. I firmly believe that they are sincere in the opinions they entertain—but I exceedingly doubt their competence to pronounce a safe judgment on some of the matters which this head comprises. I give them full credit also for being the most discriminating class of educated men, in all things which come fully within their proper sphere of knowledge; but it is impossible that they, or any set of men, should completely understand the bearings of practical questions, with which their personal experience has not rendered them familiar. If we may judge from the questions which the Commissioners put to Mr. Tyrrell, during his examination, the benefit, to be conferred on the Church by the new measure, must have appeared to them a little problematical; and I cannot withhold the expression of my surprise that his answers, unsupported as many of them are by satisfactory reasons, should have produced the effect which seems to have attended them. Mr. Tyrrell's opinion (in which almost all the others agree) is that a limitation of the Claims of the Church to sixty years will *prevent litigation.*

My Lord, I am confident, notwithstanding all this authority, that, on the contrary, suits will be multiplied to a *tenfold* degree. Owing to the ignorance of rights and of evidence—to the want of money—to natural timidity—to the hope of speedy advancement—to a disinclination to be engaged in law-suits—to the uncertainty of the result—to the greatness of the expense, and the small amount of value to be recovered, not one Incumbent of fifty is in a condition to litigate, as the law now stands; and every Clergyman feels that by avoiding a suit for Tithes, he is doing no injury to his successor. The consequence is, that not fewer than 30,000* undisturbed payments, called "moduses, "prescriptions," or "customs," are at this day payable to the Church of England. But let the proposed limitation be fixed; and future Incumbents must make it a point of conscience to go to law about *every new* payment, which proprietors may seek to establish. No man, I think, can deny this position—that the number of suits must be multiplied, provided very frequent attempts be made by Proprietors to establish fixed payments. Are such attempts, then, likely to be made?—for every thing turns upon this question. Mr. Tyrrell must think that they are not—but by what process of reasoning he has arrived at his conclusion, he has not said, and I am unable to guess. The only safe course, my Lord, we can pursue, in calculating as to future probabilities, is to take for our guides past certainties.

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* In a single parish there are often ten or even twenty of these payments, when, for instance, there are farm-moduses for a particular species of produce, and sometimes even a greater number, if more than one species be covered.

Now we have very good reason to believe that about 20,000 moduses originated, in the course of the seventeenth century. What, then, is to prevent attempts from being made to a great extent for the future? Not surely a shortening of the period of legal memory to sixty years: for hitherto a proprietor of lands had, comparatively speaking, little inducement to contemplate the formation of a fixed payment—he knew that it was liable to be set aside at any future time. But, under the proposed law, every proprietor will have the strongest possible temptation to make a beginning of such a payment, and his successor to establish it. One of two things must necessarily follow—either that *litigation* will be increased, or that the *property* of the *Church* will continually diminish for the benefit of the proprietors of land. What, then, will be the condition of the poor Incumbent, who is said to be occasionally ruined by the expenses of a suit? He may, at present, and almost always does avoid going to Law; but, if the proposed Bill should pass, a sense of duty will, not occasionally but frequently, compel poor Incumbents to have recourse to law proceedings. No man commences a suit at present, unless a successful result would render him a considerable gainer during a probable incumbency—but afterwards a Clergyman will be called upon to spend *many hundreds of pounds*, for an addition which will probably not amount, in his time, to more than £10. or £20. per annum.

I have estimated the amounts of Rents, and the values of Tithes to have become, in 1720, about *twenty-seven* times as much as they were in the time of

Richard I., owing to the diminished relative value of money, the extent of lands brought into a state of cultivation, and the improvements introduced in agriculture. Since the year 1720, such incomes have become nearly *four* times as much as they then were; and I see no reason why further changes, of a like nature, may not take place—the relative value of money is as likely as before to undergo a depression; and undoubtedly as population increases, the cultivation of lands will be extended; and, consequently, the quantity and value of the Tithes of an estate will also advance.* The proprietor will, therefore, have an *inducement* to endeavour to establish a fixed payment—the primâ-facie title, and the shortened period of limitations will hold out a *facility*—the *will* alone is wanting: and, if I may judge from some of the answers in the Appendix, there may, by possibility, be at least a few proprietors who would feel no particular objection to avail themselves of any legal facility that may be afforded them. I trust your Lordship

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* I cannot resist the temptation of "hanging a note" upon this "peg," for the encouragement of my countrymen. I have no tables by me to shew the relative amounts of exports and imports at different periods, the increase which has taken place in all taxable *quantities*, during the last century, and other accounts, which would be necessary to enable me to make an exact calculation; but taking the increase in *rents*, &c. as a ground-work (which may be a sufficiently correct one to explain my meaning) if changes in the relative value of money, &c. proceed as they have done—the national debt (supposing it to be £800,000,000.) will in fifty years be no more of a *burden* than about £400,000,000. would be at present—in one hundred years, not much more than £200,000,000. at the present day—and a debt of about £30,000,000. in the time of Elizabeth, would have been felt to be as heavy at *that* period, as £800,000,000. are *now*. Of course, as I have said, other data are necessary to render any such calculation accurate—I do not give this as any discovery—but it is possible that my letter may get into the hands of individuals, by whom such a view has not been taken.

will agree with me in thinking it to be for the good of all, that they should not have both temptations and facilities of indulgence held out to them, at one and the same moment. But I must reason, at present, as if all would yield to the temptation, were its object placed within their reach. Whenever, then, an agreement, for a considerable number of years, shall have ended—whenever a payment shall have continued for thirty-five or forty years, a suit may be expected as the consequence of the proposed Bill. The proprietor has a permanent interest, and will reason in the following manner—"the value of my Tithes is little more, as yet, than the amount of my late payment; and no Incumbent will incur heavy personal expenses, merely for the sake of his successor—he is certain of success in a suit, if he should go to law, but he would still be a very considerable loser in the end." Many Clergymen will institute actions, from the new obligation laid upon them; and when they do not, the Church will lose its property. What, then, becomes of all the delightful talk about putting an end to litigation, and saving poor Incumbents from running blindly into ruinous expense? And where is the boasted security, that this measure will preserve to the Church the property, "which now remains?" Mr. Tyrrell seems to think that evidence will be so clear, during *sixty* years, that there will be no occasion to go to law in any case. But I can tell him (what experience and observation might have told him long ago), that when a strong private advantage and preponderating wealth are on one side, and only a "clear case" on the other, men do, and will, go to law, to the end of the world.

If the Archbishop's Bill should pass, it will either not be acted upon at all, or it will operate greatly in aid of the multiplication of suits, and the alienation of Church property—for it will establish bargains for a number of years, which may be again and again re-newed, and thus give a tolerably fair beginning to pay-ments, which may afterwards be confirmed. I am not much inclined to approve of these Bills considered se-parately; but I like them still less, and regard them as dangerous, when taken in connexion with each other. The proposed Bill, of which I am chiefly speaking, proceeds upon the suggestions of almost all the Lawyers—that the period of limitation, with respect to the Church, should be compounded of so many incumbencies, and a term of years—and *three* incum-bencies are fixed upon. But the Archbishop's Bill will encourage agreements for fourteen years; and it is therefore probable that new Incumbents will find, upon their presentation, that there are *seven* years of existing leases to run. At the same time, we are told that very few Clergymen engage in suits, after they have been four or five years in a living, and none *after* seven years. Now, as Incumbents in general will be prevented by the Archbishop's Bill from com-mencing a suit for the first seven years, on account of existing leases, the security held out in your Lordship's Bill, as arising out of the provision, which requires that there shall have been *three* distinct Incumbents, will amount, in fact, to nothing at all—for none of them, or not more than one will likely be in a condi-tion to try the question of a fixed payment. As to the saving clause at the end, " unless it shall be proved

that such payment was made, or enjoyment had, by some consent or agreement expressly made or given for that purpose, by words or writing," I cannot perceive that it will be attended with the smallest benefit: for, with respect to agreements *by words*—how are they to be proved? All who could have had any knowledge of such transactions, are presumed in the Appendix to be *dead* in the course of sixty years, or to have so entirely lost their memories, that no benefit could be derived from their evidence. It will be almost equally impossible to prove that the payments, which have subsisted for sixty years, have had their origin in *written* agreements—for, as I have already stated, all the writings of the predecessor belong to his family; and a proprietor, if he be so disposed, may easily obtain possession of them before a successor is appointed.

I will now consider Mr. Tyrrell's mode of preserving such "clear evidence" as must of necessity prevent litigation. Some paramount and generally *inexpressed* good is to be a never-failing consequence of Mr. Tyrrell' views on this subject; and if any danger or difficulty arise, a *Terrier* is to prevent it. Now, my Lord, I will presume that Bishops are to have powers given them to compel the Clergy to return these Terriers; and also to oblige them, contrary to the original intention of such documents, to tell all they know about Tithes—but I have a slight objection to make in limine. Who is to compel the *Bishops* to put their new powers into sufficiently regular exercise? New schemes generally work well—or rather, men at first like their work so much that they give particular attention to it; but a Bishop has

abundance of employment in other matters, and after a time may *neglect* this portion—good-naturedly concluding that his Clergy will take care of their own rights. He may be too old for engaging in much business—or too infirm to be able always to visit his Diocese. And, again, how is a Bishop, who has two, three, four, or five hundred beneficed Clergy under him, to detect *cases of collusion?* The proprietor will not, of course, and the Incumbent dare not inform his Bishop of any such arrangement.

Next, as to the *custody* of Terriers—Mr. Tyrrell, I presume, intends that they should be deposited in the Registry of the Diocese. I know very little of these places in general; and, therefore, I can only speak to our own in Durham. The writings, which are now contained in it, are certainly well-arranged and securely preserved; but I have heard it said of one, who was in charge of the Office about forty years ago, that he found these kinds of documents to be very useful in lighting his tobacco-pipe; and it certainly does so happen that there is not a Terrier older than *thirty-five* years, belonging to *one-tenth* of the Livings of this Diocese. But it will be suggested, that a copy may be deposited in the *parish chest.* And if it were, some months elapse before a successor is appointed, and, in the mean time, the copy may disappear—for there is a never-dying interest on the other side. The same practice was followed before, with respect to Terriers and other writings; but very few parish chests, indeed, contain any thing of the kind at the present day.

And *who is to draw up* this new Terrier? The Clergyman of course. But the Clergy are not Law-

yers: and unless it be so carefully expressed that no Lawyer can possibly discover a flaw in it, such Terrier had better have been applied to the lighting of a tobacco-pipe. I can speak to this point from my own experience. I obtained the book of a predecessor, who had no intention whatever of injuring the rights of the Living—That book contained, amongst other matters, a memorandum written by himself, wherein he declared that he would sooner suffer his right hand to be cut off, than acknowledge something very bad, which had been proposed to him about moduses. But he did not finish the sentence without making a very injudicious admission, which appeared also in his Terrier—and the consequence was that, although I ultimately succeeded in the suit in which I was engaged, yet these very admissions put the parties to an expense of at least £1500. more, on account of the portion to which they were applicable, than otherwise would have been incurred.

And, again, *who are to sign* these Terriers? The Clergyman as one—but his signature will amount to very little. The Churchwardens also?—they cannot know much of *individual* payments, and one of them may have been appointed by the Clergyman. Some of the principal inhabitants may sign—but these, again, are not compellable, and they will only be concluded to speak with certainty as to their own lands. Permit me, then, to imagine myself the proprietor of an estate in a parish; and Mr. Tyrrell shall write the Terriers. I agree to pay a certain sum annually for my Tithes, which I apportion among my tenants in addition to their rents. I allow no one to see my *agreement*, and take especial care that neither I nor any of my tenants

sign Terriers. Twenty years elapse, when, according to the computed average in the Bill, the Incumbent dies. A successor is afterwards appointed, who finds the Archbishop's plan in operation; and, therefore, can take no step whatever for some years. At length, however, the period arrives when a new arrangement must be made; and accordingly we meet without witnesses—I offer to continue the former payment; and to give a sum, in the way of renewal, which is a full present-worth of the annual increase, during the probable remainder of his Incumbency—We have lived on good terms—he has an opportunity of obliging me, and the bargain is concluded. Upon his death, and before a successor has been appointed, I condole with the family, as a matter of good feeling, regret that I am about to lose them as neighbours, should like to see their late father's papers, connected with the parish, and obtain, of course, whatever might affect myself. The *new* Incumbent arrives, and refuses my tender of the usual sum—for he has seen an old Terrier, in which (after supposing it to have been so ably drawn up) I cannot possibly hope to detect a flaw. But, then, *my* signature is not affixed to it, nor the signature of any one by which my interests can be immediately affected—it is, therefore, not conclusive as against me; and no more is another Terrier, if I have not been able to prevent an equally unfavorable entry from appearing in a second. I am now in a condition to dispute the point—I have some receipts from both of the predecessors—I bring my former and present tenants as witnesses, and a steward and some hinds can also speak to the sums paid. On the other hand, the Incumbent is a stranger, has difficulty in obtaining

information, has his two terriers indeed, but he must still incur heavy expenses; the value of the Tithes, over the sum tendered, would not indemnify him if he succeeded, and his case, in spite of his terriers, is, to say the least of it, doubtful. There is only one course for him—he must give in. I have supposed the terriers to have been perfect—but your Lordship knows well that these instruments have more frequently operated *against* the Clergyman, than in favour of his claims.

I see, then, my Lord, no benefit, which is likely to attend the proposed measure, to any man but the proprietor of lands. The Church will suffer a present loss—it will be deprived of its primâ-facie *title* to the property which remains—new facilities will be created for further encroachments, for no sufficient method of protection either is, or, as far as I am able to see, can be devised—the consequence, therefore, must necessarily be a multiplication of suits, at no very distant period; and whatever uncertainties give rise to these, must also present new impediments to the transfer of real property by sale.

But a great mistake is perpetually made as to the nature of Tithe-property, which has led almost all those, who have been examined, into erroneous views of the whole subject. Some have considered Tithes to be of the nature of a land-tax; others have regarded them as a rent-charge—and in their desire to outdo the "Code Napoleon," and the "Landrechts," in classification and simplicity, they find no difficulty or incongruity in huddling up tithes, taxes, and charges into one mass, and disposing of the whole by

one brief rule. I have no objection whatever, practically speaking, so to consider Tithes: but, when we come to *Legislative* measures, affecting the *right*, it behoves us to be a little more discriminating. The right to Tithes, then, is totally different in principle from either a land-tax or a rent-charge—these last are inherent in the land itself; but the right to Tithes is only collateral to the land—its existence is immediately connected with the produce—these are uniform, and due under all circumstances; but the right to Tithes is inoperative, unless a severance have taken place. I may be said, for instance, to have the right to the tithe of corn growing in a certain field—but that right is dead, until the corn be cut; if the tenant choose to plough it down, instead of reaping it, my right does not take effect. It may appear to many, for it has so appeared to gentlemen of the Bar, that this distinction is of no consequence—but I will show presently that it is, and by an instance, which will demonstrate also, that, in addition to the injury likely to be caused to the Church by the proposed measure, an entrance will be made for a new species of spoliation, of a most annihilating description.

I choose, again, to be the proprietor of an estate—a very natural choice to make in these days, when there is a prospect of getting also the Tithes without paying for them. This estate is subject to all manner of Tithes in kind. One farm has generally paid somewhere about £50. in respect of *corn*-tithe, and £30. for all the rest. It suits me quite as well to convert it into a grass farm. I do so accordingly, and retain it, or my son (who has the same interest,

and sees the object in the same light) retains it, in this state for sixty or seventy years; it is then brought back into tillage, upon which change the Tithe of hay becomes only worth £10. The farm, having paid nothing, as far as can then be traced, but *hay*-tithe, is by the proposed Bill discharged from the payment of all others; and the property of the Church is reduced to *one-eighth.* Now, I would beg to know how the right of Tithes is to be confounded with a land-tax or rent-charge—for these could not have abated; and how are Mr. Tyrrell's terriers, and the new Bill to prevent litigation, and preserve the present property of the Church? No provisions can be made to meet this and a variety of other cases; or, if such a thing were attempted, suits would be multiplied—something like the privilege of the nullum tempus would be preserved in the same Bill, which was meant to take it away; and we should, in a little while, have the very same croaking which prevails now as to the impediments occasioned by such provisions to the transfer of real property.

As I do not allow, then, that the proposed measure would prevent litigation, I might spare myself the trouble of noticing the other reasons, which the advocates of the change employ in support of their views, viz.: that the frequent suits, for the recovery of Tithes, are the great cause of the unpopularity of the Clergy, and of dissent from the communion of the Church. But, my Lord, as there is a misconception respecting these matters, which has spread to a considerable extent amongst influential persons, I will now endeavour to remove it, and connect those ef-

fects, which all must deplore, with the *true causes* from which they arise. My Lord, I am myself a reformer—a thorough reformer, with regard to the very evils complained of—and it is because I am most desirous of seeing them entirely and for ever removed, and because the measure recommended in the Appendix is not calculated, in the remotest degree, to affect them, that my Letter has assumed the tone, which I begin to fear may have prevailed in it to an almost blameable extent.

I have lately observed in the Newspapers, that at least two petitions have been submitted to the House of Lords, which were considered as a justification of the belief that *suits* for *Tithes* are the great cause of the unpopularity of the Church, and of the spreading of dissent. One of these petitions was presented by Lord Wharncliffe, complaining that a Tithe suit was recently commenced, although the question had been decided, both at a comparatively ancient and modern period. My Lord, I am strongly inclined to suspect that sufficiently minute information had not been obtained concerning this case. It is improbable, nay, almost impossible that any man, for his own sake, would engage in a suit, under the circumstances which have been stated. Were all these suits for precisely *the same titheable articles*, arising from precisely the *same lands*, and covered by precisely the *same payments?* If the cases were the same in all these respects, and if there were no very powerful grounds for suspecting that there had been a collusion between parties, then is there just ground of complaint—but if otherwise, a totally different con-

clusion must be drawn, viz.: that there was a never-ceasing desire and endeavour to begin, in the hope of eventually establishing a modus. Another case of petition was that of Graystock—the place I never saw, and I know not even the name of the Rector—but I find enough in the petition itself to explain the whole matter. The word *libel* occurs in it. After a trial, connected with a *libel*, there followed a long Equity suit, and last of all the Rector files *fifty* bills. Now, your Lordship knows perfectly, but others may not, that all this, which is sufficiently extraordinary in appearance, can only have taken place in *one way*. A suit in the Ecclesiastical Court (an error often committed by the Clergy) must have been the first step, and taken by the Rector—the party defending brought a prohibition—chose his Court of Equity (the Chancery most likely, for the sake of delay) became plaintiff, and so had the working of the cause. The Rector sees his error—finds that his *incumbency* is not unlikely to terminate before his *suit*, and that even a favorable decree will not affect the others, who choose to stand upon separate grounds—and, then, he is *compelled* to file his *fifty* bills—not that fifty suits are to be gone through from beginning to end, but that all the parties may be before the Court. There is no evidence here, my Lord, that the Clergy are litigious—the Incumbent, in fact, had the best ground of complaint, because so many ways existed of evading or deferring a just trial of his claim. But there is sufficient evidence here, that the *law* and not the *right* is defective, and consequently that the law ought to

be amended, so that causes of such a nature may be expedited, and expenses saved.

These petitions, however, appear to have been passed over without an explanation at the time, in any way calculated to moderate the impressions which they seem to have produced. All this appears a little strange to a simple person like myself, living at a distance—but so it was; and Lord King has, partly in consequence of these, moved and obtained an Order for a return of all the suits carried on by the Clergy from a certain period up to the present time. One of the appended Law Authorities seems to have a like opinion of us, and steps out of its path to tell the world that we have by no means "*slumbered*" upon our rights for the last one hundred and fifty years—and, by the way, this particular authority confirms, in the most striking manner, what I said respecting the period when moduses generally arose—*One hundred and fifty* years carry us back to 1680—the *very year* of all others, which, according to Mr. Tyrrell's average of twenty years to an incumbency, must have brought to a close the *first continuations* of Commonwealth payments—the very period when Incumbents in general must have been presented with a *rousing* number of half-grown moduses. But, Lord King does not intend to go back to so old a period—his motion, I think, is only for *fifty* years.

Now, as I hope that his Lordship will do me the honor to read this letter, I am very desirous of providing him, before hand, with a necessary explanation, which, as in the case of the petitions, may not occur exactly at the moment, when we are to be ex-

hibited as a most litigious Order. Law proceedings are most expensive—I take that for granted. No man engages in law, unless success would repay him during a probable enjoyment—I think I may take that for granted also. Now Tithes, in order to justify a suit for their recovery, must have advanced very considerably in value over the sums tendered in lieu of them—in fact, an Incumbent will be a loser upon the whole, unless he recover nearly £150. a-year—and if, without being a timid man, he balance success against the risk of losing, he will generally not agitate a question of this sort, even with a tolerably clear case, unless the additional income amount to £200. a-year. It is perfectly obvious, therefore, that we must come down to *very modern* times before the values of the Tithes, which moduses cover, will justify suits—but then, again, in proportion as men have been long *prevented*, by the great expense of law, from *instituting* suits, it is quite clear that, when the values of things have very greatly advanced, there will be an *accumulation* of cases, about which little doubt can be entertained. If the intention be to institute a comparison between our more ancient predecessors and the Clergy in modern times (not meant, of course, to redound to our honor), perhaps these considerations will help to guide men to a right judgment. But if the intention be simply to procure a long list of Clergy, who have gone to law, another thing must be attended to. Lord King's motion includes two whole incumbencies and a half—taking, therefore, the incumbencies of England to be in round numbers 10,000, this period will include 25,000. I

trust, then, that when his Lordship obtains his Return, he will take the trouble to divide 25,000 by whatever the number of suits may be, in order to find what has been the proportion of litigants; and then move for a Return of all the *existing payments*, called moduses, &c., that he may find, by a similar process of division, whether the Clergy have actually tried as many cases or not, as might reasonably have been expected.

Having made these remarks, upon litigation connected with Tithes, I now beg to draw your Lordship's attention to the *consequences*, which are alleged to follow from such Clerical suits as may have occurred—these consequences are said to be, *the unpopularity of the Church*, and the *spreading of dissent.*

Could I be induced, my Lord, to believe that Tithe suits had indeed occasioned such consequences, or that they even deserved to hold a prominent place amongst the number of causes, which have operated to the disadvantage of the Church, then should I think that the proposed measure had been only too long delayed. But I know well that such is by no means the fact—that Tithe suits have not rendered the Church unpopular—nor added more than comparatively a few, if even a few, to the ranks of dissenters. On this point I can speak with the utmost confidence—for in addition to information, which I have received from others, I have had the double advantage of observation and experience; and, therefore, I must claim to be much more favorably placed, for arriving at a right judgment in this matter, than any whose opinions are given in the Appendix to the Report. But *they* are known to your Lordship, and

I am a stranger; and, as it is consequently impossible that a *bare assertion* of mine should carry much weight in opposition to theirs, I must beg to submit two or three observations, in support of what I have now affirmed.

1. Suits for Tithes *are not so numerous* as to have occasioned the effects which are ascribed to them—for I do not imagine that more than an average of *four* or *five* have occurred, during the life-time of any one man, in the county to which he belongs.

2. Tithe suits affect the private interests of *none* but *proprietors.* If a claim be made, and a proceeding at law ensue, the occupier is only the *ostensible* party—for his landlord pays all expenses, and indemnifies his tenant, during his lease. Again, if a farm be taken *after* a demand has been made, or a suit commenced, the farmer generally gains twenty per cent. between his Landlord and the Clergyman—his rent may, after all, be too high, but still, in making his agreement for his farm, he estimates his *Tithes* at a greater price than he ever in reality pays to the Incumbent. And

3. If Tithe suits had indeed produced the effects ascribed to them, then must unpopularity and dissent have spread more rapidly and widely amongst an *agricultural* than a *manufacturing* population. But, your Lordship knows well that the very reverse is the true state of the case—that dissent prevails most in large towns, in manufacturing, and mining districts, and in general, among classes of persons, who neither know nor care much about Tithes or Tithe suits.

I feel quite assured that your Lordship will go

along with me in all that I have now stated, and allow that there is an utter fallacy in the view, which has been taken of the unpopularity of the Church, and, consequently, an unsoundness in the opinions of those who have founded, upon this unpopularity, an argument in support of their favorite measure.

My Lord, I have now examined all the reasons, which I find to have been given in support of the proposed " limitation ;" and I can perceive no weight whatever in any one of them. Some are doubtful, or only applicable to a few cases, and others are founded in misconception. Moduses are very seldom for *corn-*tithe, and, therefore, they are of the less importance in the sales of large estates—from the nature of things their validity can be made a question in only a comparatively few sales, whilst the number proposed to be taken from the Church is great—they are not, in general, very ancient, and were intended to confer a *perpetual benefit* upon the Church ; and, therefore, it is quite as just that they should be all destroyed, as all established—and it is not the Title of the Church, which improves with time, but that of the *Land-owner.*

The proposed change will not benefit the Church. On the contrary, it will cause a loss to it in every way—it will destroy the *Title* of the Church to the Tithes—it will take away a portion of clerical property, give facilities for the creation of future moduses, introduce new plans for the alienation of Tithes—it will consequently give occasion of future suits, and compel poor Incumbents to engage in them—and it will leave the Clergy in the very same state, as to popularity, in which they are at present.

There are other objections which might be made to the measure; but at present I will only notice *two*.

1. The great harm, which must attend the proposed change, will be felt most severely in the case of poor Livings. A good Rectory can generally take care of itself—the possession of the corn and hay-tithes gives the Incumbent so strong a hold of the farmers, that no difficulty is felt respecting his *small* Tithes; and, therefore, it is the less surprising, if men, who enjoy great preferments, should not be immediately struck with the danger attending the change, which is now in contemplation. But the *poor* Incumbent's case is different—he has seldom the tithe of *hay*, and, therefore, must generally take in lieu of the other matters whatever he finds people choose to give—the prospect of establishing a fixed payment at the end of *sixty* years, will induce proprietors, in the mean time, to require of their tenants that they adhere to a uniform sum for their Tithes; and the consequence will be, that any considerable future change, in the value of money, will render it impossible for an Incumbent to maintain himself upon the living.

2. The proposed measure will enable a patron, who is also a considerable proprietor in the parish, to make encroachments upon the income of the living; and tempt him to injure the Church, by his selection of the Incumbent. Mr. Tyrrell thinks otherwise—that such proprietor will be as anxious on account of the value of his advowson, as of the protection of his estate from the payment of Tithes—and he has known cases where, under the Church Building Act, patrons have converted Vicarages into Rectories, and consi-

dered themselves indemnified by the increased value of the advowson. As to these cases, there may have been a son or relative, for whom it was desirable to make a provision—but I will rather suppose, that such augmentations (as we are not yet without truly benevolent individuals) were acts of pure generosity. In very many cases, however, a totally different course will be followed—a patron will generally prefer a privilege in favor of his property, to the securing of Tithes in kind to the living—the advantage of the one over that of the other is as *five* to *three*; for a proprietor will give *twenty* years purchase for the Tithes of his estate, and only *twelve* for an advowson—his desire, therefore, to get his lands protected at the expense of the benefice, will be in the same proportion—the best men will not take the living on the conditions he may propose, and, consequently, the Church will be filled by one of inferior worth.

My Lord, I have long felt deep regret that although complaints were continually made against abuses, real or imaginary, in our Church establishment, yet the Bills which were brought in from time to time, effected nothing—they served no other purpose than to put off the subject, whilst the causes of dissatisfaction were suffered to remain and to rankle—new complaints were made, and new Bills like the former were passed—until men who could not, and men who would not discriminate between the Church itself, and measures adopted in connexion with it, began to conclude that the disease was so deeply seated as to be wholly incurable. The proposed measure, my Lord, as far as it is said to be calculated for the removing of discon-

tent, is like the Bills which we have had already—it does not even point to one of the causes of inconvenience which the Clergy experience; and, if it be carried into a law, at this time, it may retard or prevent the adoption of other measures, which would be attended with real benefits to the Church establishment. My objections are not against the *principle* of the proposed Bill, for I think that the period of legal memory may be shortened—but I object to it on account of the time, at which it is brought forward, and the provisions which it contains—and I am the more anxious that the portion of it, which applies to the nullum tempus, &c., should be delayed; because, from hints, which have been dropped, there is reason to fear that some half-measure Bills are not unlikely to follow.

The Church, my Lord, may receive very extensive improvements, by merely calling into proper operation some of those principles, which constitutionally belong to her. And so long as these are preserved, no danger whatever is to be feared from *effectual* measures—on the contrary, she may then indulge the prospect of enjoying permanent quiet from without, when all is restored to a state of healthy energy within. Such views, my Lord, are by no means confined to me—they have been long entertained by many, and are rapidly spreading among the ordinary classes of the Clergy. A strong and general feeling prevails, that they are not fully represented—and, consequently, that their clerical comforts are not consulted, and their interests either unknown, or not sufficiently protected.

I have, in my Letter to EARL GREY, stated most of the *real* causes of the dissatisfaction which prevails, and the remedies which these causes appeared to suggest. I will, therefore, merely enumerate them at present, and refer to that Letter for a more complete account of them.

1st. Cause. Not Tithe suits, but the *practical working of the Tithe system.*

Let Tithes be commuted into a corn-rent, charged upon the proprietor, with a power of recovery as in the cases of rent or of debt.

2nd. *Non-residence of Incumbents.*

Let no further pluralities be allowed, no more living be held in commendam—and let residence be enforced.

3rd. *Inequality of Clerical provision.*

Before I state my remedy in this case, I wish to say that I adhere to my former view of Church property; and I am disposed to think that it must be correct, because it is only disapproved of by certain individuals, who are ultras of opposite kinds—the one set referring to a Monarch who, I presume, held a sceptre in the moon, and the other hoping to find a charter in one of Professor Buckland's caves. I thought I had carried Church property sufficiently far back, for any good purpose. The light in which I consider it is—that it is a *functionary* property, not assigned by the State, but derived to us from the earliest Christian teachers, and, owing to its great antiquity, carrying along with it *common-law rights*—that, being a *functionary* property, it is to be enjoyed by the Church for the religious instruction of the

people, and the exercise of charity—and that although the income of every individual living form a distinct property, yet the most ancient practice of the Church, misapplied, but yet followed up by the Church of Rome, and since continued by our laws, proves that these properties may nevertheless be lawfully made to *contribute* towards the aid of each other, by means of a tax.

The remedy, then, which I proposed for this *third* cause of offence, as well as to facilitate the removal of the *second*, was by a scale of taxation. As I did not say, in my other Letter, to what extent I thought the process of augmentation should be carried, I beg to make an addition here—I think, then, that augmentation should cease, when Bishoprics are raised to £5000. per annum, and Livings to £400.—that then the scale should be so far modified, as to render the highest preferment subject to a tax of only ten per cent.—and that the produce of this last rate of taxation should be continued, for the purpose of building and endowing new Churches, in all parishes, the population of which shall exceed 4000 persons.

There are also many other causes; but they are of minor importance, and might speedily be remedied, were these, which I have stated, once removed.

My Lord, I have made no apology for taking the liberty of addressing you, and now think it better to trust to your Lordship's kind indulgence, than to make an attempt to do that which, I am sure, I should fail to execute in a manner due to you. I have stated my sentiments without fear or favor—the former I never felt, and I have the subject too deeply at heart

to think of the latter. Even if your Lordship should not approve of the *remedies* I have ventured to propose, I yet earnestly solicit your attention to the *real causes* of the existing complaints. No man holds a higher place in the estimation and confidence both of the Clergy and Laity; and no man is better qualified than your Lordship is, to devise and complete such effectual measures, as may establish the peace, and extend the usefulness of the Church of England.

I have the honor to be, with the greatest respect,

My Lord,

Your Lordship's most obedient,

and humble Servant,

J. MILLER.

Durham, April 6, 1831.

FINIS.

F. HUMBLE, PRINTER, QUEEN-STREET, DURHAM.