

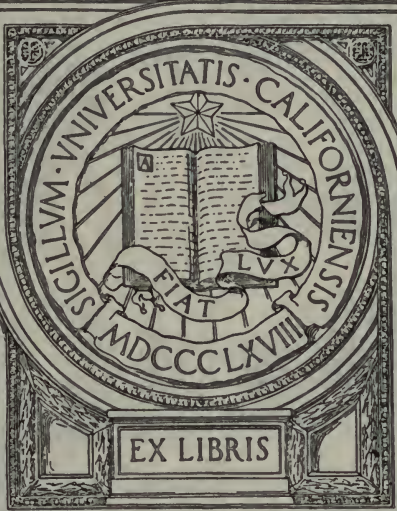
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John Eustace Grubbe.



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1.

CASE

OF

Extreme, and unparalleled Hardship:

CONTAINING

CONSIDERATIONS ON A VERDICT,

THAT

POTATOES AND TURNIPS

ARE HAY AND CORN!

by R. Ellen

Woe unto them that call evil good, and good evil; that put darkness for light, and light for darkness; that put bitter for sweet, and sweet for bitter.

ISAIAH, v. 20.

L O N D O N:

PRINTED FOR THE AUTHOR; and to be had of Mr. SHUTER,
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1799.

TO THE PUBLIC.

THE Law-suit, the woeful effects of which has reduced the Author of the following Memorial to the necessity of soliciting the patronage of the humane and benevolent Public in general, and the Clergy in particular, was not begun by him through a litigious disposition, or avaricious desire of augmenting his Income. Had it risen from either of these motives, perhaps he might have been thought to have deserved the consequences, whatever might have happened.

Being no ambitious, no expensive man, he could have lived, with his numerous family, on a small income, and would gladly have done it. But the insolent behaviour, the unprovoked attacks, the unjust encroachments of his opponents, were too much for any man to bear. In resisting these he has incurred such enormous and immense expenses, that his friends, in order to extricate him from his difficulties, have advised him to solicit that assistance, which he hopes the peculiarity of his Case will not solicit in vain.

A dispute between a Clergyman and his Parishioners, is a very unhappy, a very lamentable, event; and no man could more sincerely deplore

it, either before its beginning, or at its commencement, or during its process, than the Author himself is known to do. Yet he has this consolation remaining, and he enjoys the satisfaction of reflecting that, it did not arise from himself, but from his opponents, who would not have been content with their impositions till they had brought him to endure whatever they were pleased to lay upon him; till they had reduced his income to their own mind, and compelled him to take the small pittance, they thought proper to allow him, not as a right, but an act of charity.

The dispute consisted in this point, "Whether Potatoes and Turnips are Hay and Corn?" which was tried at the York Lent assizes in 1798. It appeared to be a matter easily determined; but chicanery will endeavour to withstand and pervert common sense and reason, and that, it seems, not always without effect. The Jury were of opinion that they were not; but influenced by the Judge, they were induced ultimately to give a verdict contrary to their own opinion.

In the following Narrative nothing is exaggerated in the Author's favour; and those circumstances, which tend to the disrepute of his opponents are either carefully omitted or slightly mentioned. A patient and attentive perusal of it is earnestly requested.

A. CASE, &c.

HAVING, in April 1787, taken possession of the Living of ROMALDKIRK, I employed the person, who was then Curate, with the view of easing and accommodating the parish, to agree with the parishioners for their Tithes, and receive their compositions for three years, which he, with the advice and assistance of some others, accordingly did, but these bargains were made so very much to my disadvantage that, the revenue of the living became very inferior to its former usual amount, and did not far exceed the large outgoings which naturally belong to it. For these three years I was, of course, dissatisfied, but suffered them to pass without murmuring. At the expiration of them, as might be expected, I employed other persons to manage the concern. This gave offence to the Curate and his assistants, who were displeased that the business should be taken out of their hands, and were grieved at seeing it managed in a better manner. They proceeded therefore, by way of revenge, to charge me with a certain rate, which had never been imposed on any former Rector. In consequence of this I laid my case, together with the Terrier, and this observation, "That Agistment Tithe, and Tithe of Potatoes and Turnips, had never been paid me;" before Mr. LEE, late ATTORNEY-GENERAL, who lived in the neighbourhood, and took his opinion as to the legality of the charge, which was, That it was justifiable by law; with this addition, however, *That if it had never been made before, it was a foolish attempt in the parish to begin now, at it could only tend to induce the Rector to increase his claims on the parishioners, the modus being confined to Hay and Corn only.* I afterwards took Mr. PAR-

TRIDGE's opinion on the subject, which exactly corresponded with Mr. LEE's. Had I been inclined to be litigious, I might, upon the strength of these opinions, have immediately paid the rate, and then had recourse to Law for the recovery of what no man ever doubted to be my due; and what no man, who understands the case, yet doubts, or ever will doubt: but choosing rather to submit to the usual commutation, than engage in the expence and trouble of a law-suit, I refused to comply; and remonstrated, that though I regarded not the value of the rate, yet conceiving it to be unjustly laid on me in the present state of tithing in the parish, and as it had never been charged to any former Rector, I was unwilling to pay it. Had this rate then been giving up, every thing would doubtless have remained quiet; but they supposing me to be poor, and therefore incapable of making use of the law for the recovery of my just rights (for they made no scruple of insolently proclaiming this) affected to despise my remonstrances, and persisted in their demand. This being succeeded by some shameful, and very aggravating circumstances, I proceeded to cite the two Chiefs in the transaction to the spiritual court for the Tithe of their Potatoes, Turnips, and Agistment. When they found the matter begin to wear a serious aspect, and that they were rather disappointed in their hopes that through fear and poverty I should sooner submit to any thing than meddle with the law, they began to soften; and after a public parish meeting, called on this very occasion, at which they were all convinced and acknowledged that the Tithes claimed were as much my due as those which they constantly paid, they came and offered to me that, all my expences should be paid, and the rate remitted, and never more imposed, if I would submit to the usual commutation, and suffer things to go on as before. The blow was struck, and I was not now willing to come to a compromise upon the terms proposed, though I al-

see p. 26

ways expressed a very great readiness to put an end to disputes and controversies upon fair and reasonable terms. The spiritual suits proceeded. One was determined in my favour: the other, with what propriety I know not, was stayed,

In the mean time I was advised to file a bill in the Exchequer against some others of my Parishioners, as the best and most effectual method of bringing them to reason. This advice was followed, and the bill filed a long time before any answer was put in to it. When the answer came, it was found to contain an assertion, such as had never been heard or even thought of before; and it was a matter of surprise and astonishment to every serious person, who understood the nature of it, how men, by dint of any influence or interest, could have been induced to swear it. The modus, which had never before been understood, never before spoken of to be any thing more than a rent for the Tithe of Hay and Corn, as expressed by the Terrier, was set up as a modus for Agistment, and all manner of predial Tithe whatever.

Notwithstanding a few influenced and interested men were procured to swear that, they had always heard and understood (what they never could have heard or understood, as will plainly appear in the course of this narrative) that the modus was paid for every thing that grew out of the ground and covered all the land; and notwithstanding the Judge's direction to the Jury to alter their verdict, I undertake to prove that, this neither was nor could possibly be the case; and that the Jury's verdict "That the agreement between the Rector and parishioners was intended to be confined to the great Tithes, Hay and Corn only; and that, the other Tithes (the Tithes contended for in the bill) were not had in contemplation," was founded in perfect truth and perfect justice;

and I trust that every unprejudiced person will be thoroughly convinced of what I assert.

First, I appeal to the Terrier, which says, That there is due to the Rector of ROMALDKIRK a certain Rent in lieu of the Tithes of Hay and Corn. This intimates, say the Lawyers, a supposed contract between some Rector and his Parishioners, which must have existed at least six hundred years to make it good; and this contract, the law, on account of its antiquity, esteems valid and binding, so that is not to be varied for ever. This I submit to. But Hay and Corn, say my opponents, or rather their *wise* Lawyers for them (for it was no idea of their own, as will presently appear) mean not only the articles well known by those names, but also Potatoes and Turnips, Peas and Beans, Rape, Hemp, Flax, Agistment, and every thing that grows in or out of the ground; and all these the Rector and Parishioners intended should be included in their bargain for Hay and Corn. This I aver to be absurd, and therefore do not submit to it: for if articles which are, and which always were well known, are pointed out in express terms, in terms which cannot be misunderstood or misapplied without wilful perversion, are to be extended not only beyond their nature, but even contrary to their nature, the most certain things that are, would be rendered uncertain; and then I ask this plain and simple question, How is any man ever to know what he bargains for? And it seems the strangest of all inconsistencies that the Law, which upon all occasions hitherto has been so particular in multiplying words that nothing may escape, and will not suffer a gauze-cap to be called muslin, nor a Bath-beaver coat, broad cloth, should, in the present instance, shew the least favour or countenance to such a construction upon the plain and indisputable English words *Hay and Corn*.

The Rector foresees an advantage in his contract for Hay and Corn; for the more these articles are increased, the greater will be his Tithes of the articles, which he has reserved in kind. Hay and Straw must be expended in the keeping of Cattle, and chiefly in the winter season, and the Farmer will proportion their number to the provision which he has for the winter; and the Rector knows, from the nature and situation of his parish, that these articles will be expended, for the most part, in the keeping of Cows and Sheep; for these are best adapted to the soil, and are most profitable to their keepers. And it was doubtless with this view that the contract was made, not to take the Hay and Corn in kind, that the farmer's provision for his cattle in the winter might not be diminished. For when it happens that provender runs short, the farmer, at the approach of winter, sells off his cattle, to the great diminution of the Tithes. The Rector then, foreseeing his advantage in leaving the Tithes of Hay and Corn in the farmer's hands, and taking a composition for it; for the Tithes of Lambs and Wool, and the increase of cattle, which he has reserved to himself, will of course be increased by the Hay and Corn, for which he has agreed to take a certain rent: can it be supposed, that he ever intended that Potatoes and Rape, Mustard and Hops, Flax and Hemp, which so far from promoting his interest in the way that he must foresee Corn and Hay would do, manifestly tend to diminish and extinguish it, should be included in his bargain? Is it possible to imagine, that the same names and terms should comprehend both the articles which promote his interest, and those which go to destroy it? Add to this, the unreasonableness of supposing that a man in his senses should contract for he knows not what, nor to what extent, and intend that, under the names of two well-known articles, whose nature and effects he knows and foresees, ten thousand, or

ten times ten thousand, whose nature and effects he could not possibly know, or foresee should be included ; so that if it were even possible that such a contract should have taken place, it would want that reasonable commencement, and all those other qualifications which the law requires, to constitute a modus ; and having been founded in idiotism, or insanity, must have been void to all intents and purposes from the very beginning.

Agreeably to this way of arguing, each Rector, as far back as the memory of man goes, constantly and uniformly told his parishioners, “ Keep to the original contract, Hay and Corn, and I am satisfied ; but if you introduce and cultivate new articles, the Tithe of them must be paid, and for this reason, because, otherwise I am a sufferer by the diminution of the Tithe of Wool, Lambs, Calves, and all the increase of cattle ;” consequently these articles were not introduced to any considerable value till very lately : and the reason why very small quantities of them were not tithed is easily given. A commutation for them was always allowed by the Rector’s not being rated ; and besides, the predicament in which a Clergyman stands, requires a particular kind of conduct. If he is exact, he is reproached ; if he insists upon trifles, he becomes ridiculous. Many things he is obliged to give up entirely, and in his compositions for most, to take less than their real value. Having myself asked a man if he had any Turnips, he replied he had some, and I might take the Tithe of them away with me if I pleased, and shewed me about an hundred Turnips growing in a stack garth. I naturally took no further notice of them. Contempt and ridicule would have followed the ten Turnips, had they been taken away ; but this does not prove that I had no right to them.

These articles were introduced thus gradually and in-

sensibly, even within the memory of people now living, and who are advanced to no great age; and whenever the Rectors discovered that they had so increased as to make the Tithe worth their notice, they had insisted upon, and enforced the payment of it in several instances.

But it will be said, the Agistment Tithe was never paid, and that, as there must always have been Agistment, this was probably intended to have been included in the bargain for Hay and Corn: for an answer to this, I might recur to the words themselves; but I further ask, How came the Agistment Tithe of Holbeach, and other parishes, both where there are moduses for Hay and Corn, and where not, never to be demanded; never to be paid, till so very lately? I know of no answer that can be given to this question; but that it was never thought of, or not understood. The same answer must be given, with respect to the Agistment of my parish; and then, I further ask, How could a man bargain for what he never thought of, or understood? How could he ask any price for it? Or, who could give him any thing for it? Moreover, Agistment Tithe arose from the reasonableness of it, and has but of late years been known: the justice of it, however, presently appears; it has nothing to do with Hay or Corn; but in its very consequence, as it was designed, naturally causes the pastured land to yield its Tithe, whether fed on by breeding or barren Cattle. The reason for it therefore, equally exists, whether there is a modus for Hay and Corn or not; there is no securing the Tithe of pastured land without it; and the Rector having reserved to himself the Tithe of Wool, Lambs, Calves, and all the increase of Cattle, and the Parish having agreed to that reservation, it must have been perfectly understood between them, that the benefit of the Tithes of pastured land was to be paid and received, and the modus, or rent, to extend no further than the express stipulation of Hay and Corn, the winter

provision and accommodation for those animals ; for if the Agistment, which at that time, and till within these twenty years, consisted of little more than a few beasts bringing up for the plough and pail, and even within my time, was of no considerable value, and which might be extended to the diminution, and even extinction, of sheep-keeping, the Tithe of which is the main support of the Living, had been designed in the original Contract for Hay and Corn, it is more than probable, that the Lambs and Wool would never have been reserved at all, but that a bargain would have been made for the whole Tithes together. The Tithes of Lambs and Wool cannot be secured, if Agistment Tithe be not allowed. They will of course decrease, and may be utterly extinguished: Former Rectors always claimed Agistment Tithe as their due ; and in their books there are instances of their having taken it where it increased beyond due bounds and infringed upon their other Tithes, though they did not regularly enforce the payment of it:

To strengthen and confirm these reasons I have the opinions of Mr. LEE, formerly ATTORNEY-GENERAL ; Mr. PARTRIDGE, Mr. BURTON, and Mr. KING.

Mr. LEE, as beforementioned ; says, “ The modus is “ confined to Hay and Corn only ;” and this opinion is the more to be depended on, as it is not an answer to any question put to him, but an observation of his own, when consulted as to the legality of the rate.

Mr. PARTRIDGE, on the state of the case, “ The “ above, is a copy of the Terrier of the parish of Ro- “ MALDKIRK, from the Archdeaconry of RICHMOND. “ The present Rector is desirous of your Opinion, whe- “ ther he is intitled to the Tithe of Potatoes, Turnips, “ Peas, Beans, Rape, and Agistment” ; answers, “ The “ Rector is intitled to the Tithe of all these articles ; and

“ he is also intitled to the Tithes of Agistment, which, though never before taken, or demanded, is nevertheless due, of common right.”

Mr. BURTON says, “ The Terrier is *material* evidence in the Rector’s favour.”

Mr. KING says, “ The Terrier can only speak for itself, as far as it goes, *the rest is due in kind.*”

These are the Opinions I had before the commencement, and during the process of the suit; and in taking these opinions, I was particularly careful not to state any thing in my own favour, that they might be the more to be relied on. And I had also seen the opinions of great men, taken on the same occasion, by my adversaries, which were to the very same effect, That these Tithes were due of common right, and that the payment of them could not be resisted with any hopes of success.

It appears then, that the Rector could not intend to agree for more than was expressed by the words Hay and Corn themselves, from the nature of the articles agreed for; from the inconsistency of supposing a man in his senses to have intended, by his agreement for Hay and Corn, which considerably promote his interest, to include those articles which go to destroy it; from the absurdity of imagining, that any man of plain understanding would agree for he knew not what, and by an instrument expressing only two well-known articles, whose nature and effects he was perfectly acquainted with, intend that unknown articles, to any amount and number, whose nature and effects he could not know, or foresee, should be included; from the constant and repeated declarations of the Rectors themselves, and from the opinions of men, eminent for their learning in the law, and well versed in

affairs of this kind; which all united to support these reasons.

Though much more might be said, this is sufficient to prove that the Rector, who made the agreement, and all succeeding Rectors, from generation to generation, neither had, nor could have, any intention of bargaining for more than the express meaning of the words Hay and Corn, carries with it.

It will also appear by the sequel, that the parishioners themselves, by the contract for Hay and Corn, never understood that any thing more than what fairly came under those denominations, was ever designed.

I myself had been Rector for seven years, before the answer to the bill appeared; and I solemnly protest that, till I read the answer to the bill, I never once heard it pretended that the modus had any concern with the articles contended for. Accounts of them had been demanded, and given throughout the parish, and no mention ever made of the modus. Some even paid compositions, and some said they would pay in kind. Two men of considerable property, men of consequence in the parish, members of the select vestry, and one of them, in particular, reckoned as shrewd a person as any in the parish, were cited to the Spiritual Court for the Tithes of these articles, and no such answer given as was afterwards put into the Court of Exchequer. Now, if it always had been the notion of the parish, that the modus for Hay and Corn was designed to extend to every thing that grew in or out of the ground, and covered all the land, as they were taught afterwards to express it; How came it never to be mentioned before the answer to the bill appeared? How happened it, that not one person, of whom the Tithes were de-

manded, ever spoke of it at that time? (They acknowledged the Tithes to be due, but threatened loudly to ruin me with expence, if I attempted to enforce the payment of them by law.) And, how came it to pass, that the great men of the parish should answer differently, when cited to the Spiritual Court? From these circumstances it appears clearly, that their defence was no idea of the parish, as it was pretended, but an invention of counsel, without the least foundation in truth or justice; and it cannot be deemed going too far to say, that the answer to the bill was founded in falshood, and supported by perjury. Here I might take occasion to make some severe reflections on certain descriptions of men; but, according to that tenderness which I mean to observe on this subject, I at present forbear.

The next circumstance, which proves the badness of their cause, is their threatening, like United Irishmen, every person with ruin and destruction, who should dare to give evidence in my favour. If their cause had been good, they would not have threatened, they would not have been afraid of the truth.

They had also, before my time, proceeded very gradually, with fear and trembling, in introducing these new articles into the parish, counting themselves favoured and indulged, by the lenity of the Rector, if they escaped paying the Tithe of them. They knew, that by the increase of these articles, the Rector's Tithes of Wool and Lambs must be diminished; and they knew of instances, where the Tithe of them had been paid, and of one, in an assembly of the heads and leading men of the parish, who met on purpose to be witnesses, and who were all satisfied with, and assented to the justice of the claim.

But again, I cannot help mentioning the Terriers, five of which, (as many as could be found) were produced on the trial, and admitted as evidence. Four of these were taken from the Archdeacon's, and one from the Bishops' Court. Two of them were without signatures, two signed by the parish only, and not the Rector, and one by the Rector and parish together. All these, with divers others that could not be found, it appeared by the parish books, were drawn by the direction, and at the expence of the parish, and allowed in their accounts, regularly signed by the members of the select vestry. Here I ask, (the heads of the parish having worded these Terriers at their pleasure), Were there no words, or phrase, in the English language, that could express their meaning? And if not, Can it be supposed that they would have made choice of words that would convey less than their meaning? Might it not rather be expected, that they would have chosen such as would express more? Mr. BURTON observed, that the Terriers signed by the parish, and not the Rector, were particular evidence in favour of the Rector, because they could not have been signed under his influence.

Unfortunately, only the two Terriers without signatures had been found previous to the hearing before the Barons of the Exchequer, which could not, for want of their being signed, be admitted as evidence. The other Terriers, which were signed, and the account of them all in the parish books, were not discovered till some time after. It is imagined, that if these, and the parish books, had been discovered in time to have been exhibited at the commission, the affair would have terminated in the Exchequer, and not have been sent to York for trial.

Another conclusive circumstance, is that of the rates not having been charged. It is impossible to conceive, that they had any other motive for this act of favour, (if it may be so called) but their own interest, but their dread of a demand of Tithes more than equivalent; for nobody, I am persuaded, who knows the least of the inhabitants of the parish of ROMALDKIRK, will ever say, that they have the least disposition to acts of civility and generosity, especially to their Rectors; but that they are remarkable for a contrary behaviour. They have been guilty of divers acts of fraud and insolence towards me; and the books of former Rectors, together with other circumstances, prove that their conduct towards my predecessors, was in no respect better.

Besides, it is well known, that the parish, sensible of the weakness and insupportableness of their cause, never had the least idea of success in the law. They openly declared it. They put their whole confidence in threatening, and expecting, to run me down, and ruin me with expence.

To these Arguments I add that of their conduct, since the verdict, at York.

The rates which they were afraid to impose before the trial, they immediately imposed, as soon as the event of it was known;* the articles, which they had before gradually introduced with fear and caution, and which were scarcely worth notice before my time, they are now preparing to cultivate by wholesale; and instead of the few Scotch beasts, which they before kept on the commons, they are now encreasing them to an

* The rate mentioned in the former part of this case, was one single rate in a certain particular place. Those here alluded to, are divers other rates in divers other places.

alarming degree ; and, if (which is far from being improbable) these should be wholly introduced instead of Sheep, which have been kept there to the amount of eighteen thousand, (the Tithe of Lambs and Wool arising from them, being the only Tithe now paid worth mentioning) what is to become of the income of the living ? The first fruits and the tenths, which are exceedingly high ; the salary of the Curate of the Chapel of Ease ; the expence of repairing the large and numerous buildings which belong to it ; the land-tax, and other great outgoings, could never be paid. Here then it may be asked, not only is it possible to suppose that any Rector could make an agreement which he could not but see might in the event swallow up all the reservations he had made to himself, and more than extinguish his whole income ? but also, Is it even possible to suppose that ever the parish intended it ? And what must be thought of a decision grounded upon a supposition that it was the undoubted intention of both Rector and parishioners that, new articles should be introduced to the diminution, and even substituted in the very place of the old articles, which yielded their Tithes in kind, and pay no Tithe ; and that the modus or rent, in lieu of the Tithe of Hay and Corn, should be a full compensation and satisfaction for the whole together ? Well, therefore, might the persons who had largely contributed to defend the cause against me, though with no other hope of success but the common one of wearing me out, and reducing me to the necessity of giving it up through want, when informed that the Rector had been beaten at York in every point, Agistment and all, exclaim, that they would not believe it ; that it must be a mistake ; that it was contrary to the law of the land ! and, that notwithstanding what had happened, there could be no doubt of my right to what I had contended for !

To all this I must not forget to add, that people living out of the parish have been accustomed to keep Sheep, during the summer season, on a Common belonging to this parish, called, MICKLE FELL, for which they have, for time immemorial, paid the Rector of ROMALDKIRK to the value of about half their Tithes; but having heard of the verdict at York, they have, one and all, sent me word that they will pay me no more. And if the verdict should be established, I am totally without remedy to compel them; for if Potatoes and Turnips be Hay and Corn, these, or any other Tithes (there being twopence paid annually by each householder in lieu of a Hen) may be covered under the Hen modus.

Thus then from the conduct of my parishioners, both before and since the York verdict, it evidently appears that they themselves, as well as the Rector, perfectly understood the agreement, and that no more was ever intended than what was *ipso facto et totidem verbis* contracted for.

It may well, therefore, be a matter of astonishment, as it really is to all the world, how an affair, so selfevident could have miscarried in any court of law or equity. Professional men living in the neighbourhood, as well as others, who had known every circumstance belonging to the parish long before I was born, uniformly declared, that it was impossible my suit should fail, unless through mismanagement. No trouble, no expence, was spared on my part to secure a right management of it, and to prevent errors. Whether it has failed through mismanagement, or through some other unfortunate cause, I shall leave to those who were concerned to make out, and the world to judge,

Their evidence consisted of a few interested and influenced men; men occupying or possessing lands in the

parish; men contributing themselves, or tenants to those who contributed to the defence of the suit, and though they could not be evidence for themselves, they were suffered to be evidence each for the others. William could not be evidence for William, nor Thomas for Thomas; but William was evidence for Thomas, and Thomas for William: these were produced to swear what has plainly been proved in this narrative neither was nor could possibly have been the case, that it always had been the received notion of the parish, that the rent in lieu of the Tithe of Hay and Corn was paid for all that grew out of the ground and covered all the land. And some of them added, that articles had been grown by them besides Hay and Corn, and the Tithe of them not paid. This might have been true without the least prejudice to my claim, for the reasons beforementioned, viz. The commutation of rates, and the aversion that a Clergyman in particular must have to making himself ridiculous for trifles. They attempted to prove nothing more, and several of their own witnesses even swore that the modus was for Hay and Corn only; reason, therefore, had it been permitted to operate, must have answered and explained this without contradiction or opposition from me. Nevertheless, witnesses attended also on my behalf; men of considerable property in the parish, men of character, men of respectability and integrity, who were conscientious, and above the wish of screening themselves from the payment of Tithe by falshood, and determined to speak the truth at all events, though threatened with ruin by the opposite party for so doing. These men were ready to testify, that they understood the nature of the business; that they had themselves paid the modus, or rent, and had always heard, and understood, plainly, and indisputably, that it was for Hay and Corn only; that they had never heard otherwise, till late, in the present dispute; and that it had always been the received opinion of the whole parish

without distinction or difference; that accounts of the articles contended for, had been demanded and given throughout the parish, and not a word mentioned of the Corn and Hay modus, or any thing being paid in lieu of the Tithe of them; and that one of the wisest and most respectable men of the parish, lately deceased at a very advanced age, who had always been remarkable for his knowledge in parish affairs, had frequently, both before my time and since, advised the parishioners always to keep friends with the Rector; never to think of rating him, or doing any thing to offend him, as he had a right to more Tithes than they paid him; and that my opponents themselves, had often repeated what they had heard from the mouths of the two former Rectors, the only that can be remembered, *viz.* "That they always considered themselves intitled to the Tithe of those articles, and would inforce the payment of it, when of any value;" and that the parishioners never, at any time, pretended, or even mentioned, a supposition, that the Corn and Hay modus had any concern with it.

In addition to this *vivâ voce* evidence, we had the Terriers from the Bishops' and Archdeacons' Courts, signed by several principal inhabitants and churchwardens, expressing no other modus, but a certain rent in lieu of the Tithe of Hay and Corn belonging to the parish. We had the parish books of accounts, shewing, that these Terriers were drawn by the direction of the four-and-twenty, or select vestry, and at the expence of the parish; which accounts had been regularly passed, and signed by the select vestry. We had also the two answers from the men cited to the Spiritual Court, before alluded to, which by no means corresponded with the answers here given, and the defence here set up. We had likewise proof, that one of their witnesses,

who had sworn, to his remembrance of his father's growing Potatoes for twenty years together, must of course, have remembered nine years before his birth; and that, though he swore that his father grew six acres of Potatoes every year for all that time, and never paid the Tithe of them, his father never rented, or occupied, that quantity of land in his whole life; that he never grew an acre; that he never grew near an acre but *once*; and that Dr. BROWELL, the then Rector, insisted upon the Tithe of them; did take it; and that he used to tease the Doctor by taking up small quantities at a time, and sending to him often to take the Tithe of those small and inconsiderable quantities.

This was the first new article that was introduced into the parish, and this the person that introduced it; and when others wished to follow his example, they began to lament, as they expressed themselves, that there was not a Potatoe-tooth in the Terrier. Now, if it always had been the idea of the parish, that Potatoes, or any thing that grew in, or out of the ground, was Hay or Corn, Whence could this lamentation arise? But if this decision should be established, they will have no more to lament the Terrier's want of teeth, for this puts into it not only a Potatoe-tooth, but also a Turnip-tooth, a Pea-tooth, a Bean-tooth, a Rape-tooth, a Hemp-tooth, a Flax-tooth, a Hop-tooth, an Agistment-tooth, and such a number of other teeth as will devour my whole income, and drive myself and family starving into banishment. This takes away the one little ewe lamb that remained for our comfort and support.

During Dr. BROWELL's time no other person, as far as I can find, grew either Potatoes or Turnips, or at least in such small quantities that it would have been

ridiculous to have taken the Tithe of them. And for the last ten years of his life, he was, through the loss of his mental faculties, incapable of looking after, and managing his affairs.

Mr. GIBSON, his successor, and my immediate predecessor, used to tell his parishioners, that he would not be exact about the Tithe of those articles, if they grew a small quantity only for their own family use ; but that, if they grew any for sale, he would insist on the Tithe of them. He caught one man going to market with Potatoes, and him he immediately compelled to pay the Tithe before the heads of the parish, whom he called together for the very purpose of being witnesses of the fact. One of these attended at York assizes on my behalf,

Another of their witnesses, though he had for several years before occupied lands in the parish, and agreed with me, and paid me, for his Tithes, and since has done the same without interruption, swore that he occupied no lands, paid no Tithes, and had no concerns in the suit.

I believe some part of this evidence (for I was not present at the trial) was prevented from being brought forward ; and that, as my Counsel informs me, very wrongfully. The Jury, however, were so satisfied of the justice of my cause, by what passed, that they brought in their verdict, "That the modus was intended
 " to be confined to the great Tithes, Hay and Corn only ;
 " and that the other Tithes were not had in contem-
 " plation." Whether this, the Jury's verdict, was not founded in perfect truth and perfect justice, and whether it was possible that the case could have been otherwise, I leave to the world to decide. The Judge, however,

(I mean no reflection on him.—I have heard he is a good man ; but the best and wisest may err, and the most innocent suffer) directed them again to find in favour of the plaintiff ; and they, whether by mistake, (for I was all along the plaintiff, except in this issue) or otherwise, then gave a verdict generally, for the plaintiff. Now, if the first was a solemn verdict given upon oath, which it surely must have been, and the second contradicts it, the propriety of swearing to contradictions in the same breath, remains to be reconciled.

The judge has, I am informed, returned his certificate, or account of the trial, in point blank terms, against me ; procured judgment to be signed, and wholly suppressed the former part of the verdict, as if no such thing had ever happened ; by which means, if there can be no redress, all the rich people, and best parts of the parish, will be exempt from the payment of Tithes ; and the Tithes, which remain to be paid, will fall upon the poorest farmers and upon the most barren parts.

But the question rests wholly here, Is it the property of the law to prevent fraud and secure mens' rights, or to open a door to all manner of evasions to diminish and destroy them? The Tithe of Wool, Lambs, and Calves, cannot be secure, if barren cattle are permitted to be introduced Tithe free, instead of increasing cattle ; or if Potatoes, Hemp, Flax, and other the like articles, are suffered to be added, or substituted, under the names of Hay and Corn, which must diminish the number of cattle kept, and may, in the end, prevent the keeping of any cattle at all.

In short, I wish for nothing from the law, but

plain justice and equity. The original contract, it is self-evident, tends to promote and increase the Tithes reserved in kind; and the introduction of new articles of agriculture, and substituting barren Kyloes instead of Sheep, it is as self-evident, tends to diminish and extinguish them. Nothing, therefore, can be more fair and reasonable, than that these should pay their due Tithes, to make amends for the loss sustained by the decrease of the Tithes on the old footing; and nothing can be more absurd, than to pretend that, notwithstanding reservations were made and allowed, the original contract for Hay and Corn was designed to swallow them all up, and leave not one of them remaining.

Had I not been thoroughly convinced of the justice of my cause, and had not that conviction likewise been supported by the firm and decided opinions of the most eminent men in the Law: had there been but the shadow of a doubt, either in my own mind, or in the minds of others, I would rather have submitted to any hardship than begun the contest; but right being so plainly on my side, and strengthened and encouraged as I was, it seems to be a most terrible consequence that I should fail; and that, after the most weighty expence, to my very great inconvenience, I should be overpowered with the costs of my adversaries, to the utter ruin of myself and family; as if I had been guilty of that most unpardonable crime, which, I truly say, my soul abhors, of having troubled and harrassed them with an unreasonable, and wanton litigation.

R. BLIGH.

Romaldkirk, Yorkshire.

August 25, 1798.

ERRATA.

Page 6, line 14, for giving, read given.

—11, line 7, for never, read not regularly.

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