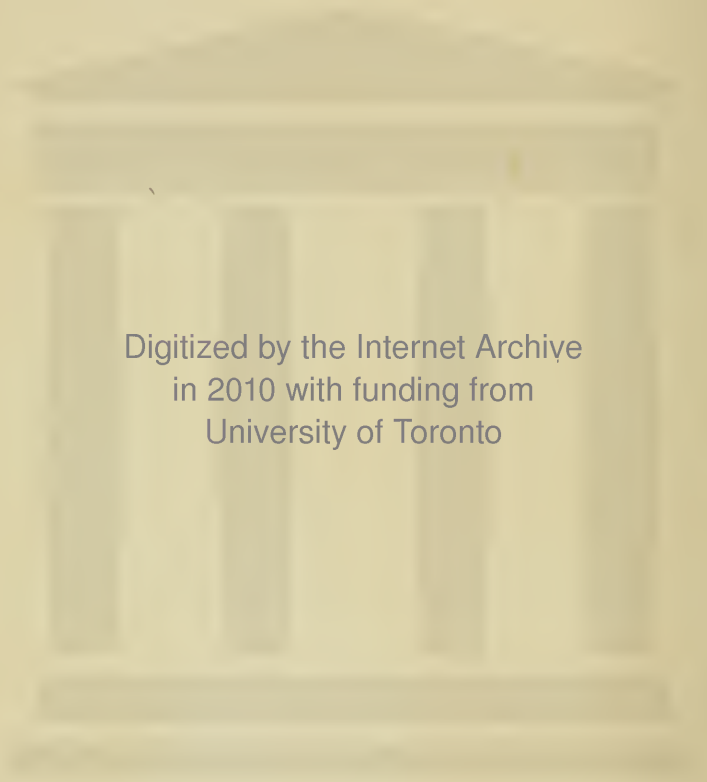
GOD & OUR RIGHT

AN HISTORICAL, LEGAL AND ETHICAL DEFENCE OF TITHE & LANDED PROPERTY.



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TITHE & LANDED PROPERTY.

SPECIALLY WRITTEN FOR THE

ANTI-LIBERATION SOCIETY.

BY

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"QUOD TUUM TENE."

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PREFACE.

In a notice of "The Established Church in Wales," a book which I wrote last year for the Anti-Liberation Society, the critic, opposed no doubt on principle to the opinions expressed, stated that it was written "to show what a blessing the Anglican Church is to Wales and how wicked are the 'Spoliators.'" That was, it is true, a secondary motive, but the primary one was to protest on behalf of the Anti-Liberation Society against a belief held by a good many persons that what's mine is theirs and what's theirs is their own. The motive underlying this book is nearly the same, though with this difference, that while it was possible to defend the moral character of the Church, whether in Wales or in England, against the interested attacks of covetous persons, it is not always possible to defend the practices of individual land or tithe owners. Sometimes, though not often, we meet with a monied but objectionable person of this class, whose acts no one who had the slightest regard for justice and right could possibly defend, and no such defence is attempted in the following pages. The book is not written "to show what a blessing the Landlords are"; that is a matter for individual criticism in particular cases as they arise, but as in the other case it is written to show how wicked the spoliators would be if they could.

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CHAPTER I.

A PRELIMINARY SURVEY IN BRIEF. THE MANIFESTO OF THE SOCIAL DEMOCRATIC FEDERATION. DISTINCTION BETWEEN LANDED AND PERSONAL PROPERTY. TITHE IS REAL PROPERTY AND INTIMATELY ASSOCIATED WITH THE LAND. TITHE NOT A TAX. THE FIRST FORMIDABLE AGITATION AGAINST TITHE. SOME OLD TITHE PAMPHLETS.

TITHES, like rates and taxes, and indeed most other charges, under which term may be included rents, are often paid under protest, and sometimes not paid at all, nor are arguments wanting to prove that they are immoral and vexatious in their nature and ought either to be abolished or else appropriated to other uses. Similarly the right to possess landed property is often denied, while an increasing section of social economists profess to see unrighteousness in the private possession of any species of property whatsoever. If a scheme could be devised and successfully carried out for vesting every kind of property in the State, for the payment of an annual income to every man woman and child for life, for the discouragement of paid officials and above all to obviate the dire necessity that haunts most of us of having to work for our living, it is possible that Great Britain and even Ireland, might be immensely the better for it. If such a state of things could be guaranteed to subsist against extravagance and usury,

covetousness and theft, few of us would lightly reject conditions that might contribute, not merely in the long run, but at once, to our permanent advantage, for we should, under such happy circumstances, be comparatively free from care, excitement and apprehension, and like Tityrus, might, if we pleased, recline beneath the shelter of a spreading beech practising woodland lays, oblivious of the world's alarms.

But these things have never been, and in the face of human nature cannot be, nor if they could, would they long continue, for mankind is emulative, ambitious and consequently egoistic. There would be little to live for under such a *régime*, and nothing to do but to watch the hours drag wearily along. Nothing can be more certain than that the forced apportionment of all kinds of property, whether directly or through the medium of the State, would be followed at no great distance of time by encroachment, in which cunning and every phase of chicanery and fraud would play an underhand, but so far as the result was concerned, a very pronounced part. In other words, continual re-adjustments would alone keep the balance of interest in anything approaching an equipoise and prevent one man from enriching himself at the expense of his neighbour, though even re-adjustment would not be a complete protection against concealment and artifice.

It may possibly be urged that the claims of a certain section of the community are being purposely

exaggerated with the object of laying a foundation for arguments to be subsequently employed, not only against them, but against anyone whose opinions with regard to tithe and landed property may be opposed to our own. This is a very common form of objection which it will be as well to meet at once by an appeal to the manifesto of the "Social-Democratic Federation," a well-organised representative body, numbering among its members many exceedingly able and thoughtful advocates of principles that may seem to us as new and strange as they are revolutionary, but which are, nevertheless, old enough in theory. The object of the Federation is "the Socialisation "of the means of production, distribution and ex- "change, to be controlled by a Democratic State "in the interest of the entire community, and the "complete emancipation of labour from the domina- "tion of capitalism and landlordism with the estab- "lishment of a social and economic equality be- "tween the sexes." To further these ends the Federation has drawn up a programme, which presumably, has been accepted by its members. The sections material to the present discussion are italicised.

1. All Officers or Administrators to be elected by equal adult-suffrage and to be paid by the community.

2. Legislation by the people in such wise that no project of Law shall become legally binding till accepted by the majority of the people.

3. The abolition of a standing army, and the establishment of a national citizen force; the people to decide on Peace or War.

4. All education, higher no less than elementary, to be compulsory, secular, industrial, and gratuitous for all alike.

5. The administration of justice to be gratuitous for all members of society.

6. *The land with all the mines, railways and other means of transit, to be declared and treated as collective or common property.*

7. *The means of production, distribution, and exchange to be declared and treated as collective or common property.*

8. *The production and distribution of wealth to be regulated by Society in the common interests of all its members.*

It cannot be questioned that one of the objects disclosed by this synopsis is to affect a radical change in the ownership of property of every kind, personal as well as real, and as this would doubtless take a long time to accomplish, certain "palliatives" are urged for immediate adoption. These are:—

1. The compulsory maintenance of healthy dwellings for the people, such dwellings to be let at rents to cover the cost of construction and maintenance alone.

2. Free, secular and technical education, compulsory upon all classes, together with free maintenance for the children in all Board Schools.

3. Eight hours or less to be the normal working day fixed in all trades and industries by legislative enactment, or not more than forty-eight hours per week. Penalties to be inflicted for any infringement of this law.

4. Cumulative taxation of all incomes exceeding £300 a year.

5. State *appropriation* of Railways; Municipal Ownership and control of Gas, Electric Light, and Water Supplies; the Organisation of Tramway and Omnibus Services and similar monopolies in the interests of the entire community.

6. The extension of the Post Office Savings Bank, which shall absorb all private institutions that derive a profit from operations in money or credit.

7. *Repudiation of the National Debt.*

8. *Nationalisation of the Land* and organisation of agricultural and industrial armies under State and Municipal control on co-operative principles.

9. As means for the peaceful attainment of these objects the Social-Democratic Federation advocates:—Payment of Members of Parliament and all local bodies and official expenses of Elections out of the Public Funds, Adult Suffrage, Annual Parliaments, Proportional Representation, Second Ballot, Abolition of the Monarchy and the House of Lords, *Disestablishment and Disendowment of all State Churches*, Extension of the powers of

County Councils, the Establishment of District Councils, Legislative independence for all parts of the Empire.

The word "appropriation" in clause 5 is italicised upon the reasonable assumption that it means "sequestration," "confiscation."

"Repudiation of the National Debt," would involve the ruin of thousands who hold Government Stock which they have been induced to take up on an implied assurance of perfect security, and this clause alone, even were there no other, would prove to the hilt what the opinions of the Federation with regard to property of every kind really are, opinions which at any rate they have the courage to openly avow and which are therefore entitled to respect, however much we may disagree with them. The object at this stage is not to combat the ideas of any body of politicians, but merely to show that the right of private persons to possess property of one kind or another to the exclusion of their neighbours, is seriously questioned in certain quarters.

For obvious reasons this grand scheme of universal distribution does not commend itself to any save a comparative few who seem to have unlimited faith in human charity and perhaps little or nothing to lose, but there are yet a considerable number of responsible and more reasonable people who see a wide economic distinction between real or landed property on the one hand, and personal property,

whether consisting of money or goods, on the other. Their primary axiom is that those who are born on the soil have a right, equally with their fellows, to walk upon it and to till it all the days of their life, and when they die, to be buried beneath it. Portable property is in a different position. That was created or acquired by the labour of man and can pass from hand to hand; may legitimately and fairly be made the subject of sale or exchange for other goods, for money, or for labour as may be agreed on. The very nature of landed property gives it a fixed and stable position that nothing but an earthquake or subsidence can affect, for in the ingenuous words of an eminent legal writer, "No man be he ever so feloniously disposed can run away with an acre of land." The distinction that many maintain ought to exist in the ownership of the two great species of property is lucidly and ably conveyed in verse by an anonymous poet:—

Who made the land?
Did you, or you
Who call this land your own?
From out your hand
Came it, you few,
Or from our God's alone?
What man can make
He owns; 'tis right;
That justly is his own:
But this you take
From us by might,
By right, 'tis ours alone;
This land you dare your own to call,
This, Lords and Squires, belongs to all.

Your title show
This land to own:
Who signed it? Man or God?

God gave it! No!
The sword alone,
Or some old tyrant's nod;
What was no king's
No king could give.
The sun, the common air,
The earth, are things
For all that live
To gladden on and share:
We laugh at those who dare to call
The land their own: 'twas made for all.

It may be admitted that had society originally recognised the distinction insisted upon by the author of these lines and had it acted upon it in such a way that all landed property became thenceforward inalienable and common, there would be little to complain of now, and very probably hundreds of thousands of acres lying barren would long since have been converted into arable land, to the very great profit and advantage of the community. It is often true that what the private owner cannot do, either from lack of opportunity or for want of means, a powerful State might be able to accomplish as a matter of course, but this is not the question that concerns us at the present day, except in so far as it may be feasible to inaugurate a state of things that our ancestors of eight centuries ago wilfully or inadvertently ignored. It is legitimate to argue that our present system of tenure is objectionable and that some other system would be more just, and calculated to benefit the greater number, but if this argument is followed up in practice, it must be based on a foundation of justice, having regard to all the

circumstances of the case. As to what would be justice, in view of such a stupendous change is a matter for careful consideration, unless indeed the dispute be still further complicated by revolution, in which event the most powerful would infallibly seize more than they were equitably entitled to. A successful revolt is always followed by a redistribution of property at the expense of those who have had the misfortune to be hostile to the victors, but the apportionment is invariably conducted upon principles which are very far from being equitable, and discontent speedily becomes rife. The course of history, whether of our own, or any other civilised country, proves over and over again the truth of this assertion.

In the face of experience so often repeated, it would be idle to maintain that force can satisfactorily accomplish what argument has failed to justify, and no amount of argument can establish the justice of forfeiting property in the possession of another, whose title has been mediately confirmed by an ownership extending over a period of hundreds of years. The strongest case that could be put by the advocates of confiscation would be the rare one in which landed property had descended in uninterrupted succession from father to son, the original ancestral owner being proved to have acquired it by fraud or force, but even in this case, an account, at the very least, would have to be taken of a great part of the money expended upon

it, which must have found its way into the pockets of the people at large. In the vast majority of instances land does not descend, but is bought and sold many times in a century under certain conditions, the chief of which is, that the purchaser shall not be dispossessed of what he has paid for, except by some other person who can show a better legal title to it than himself.

It is true that at present the combination against vested landed interests is not sufficiently powerful to extort a radical change and for that reason probably, proprietors do not think it worth while to protest, but they will at any rate remember that the agitation against tithe—which is freehold and not personal property—has been continuing for a great number of years, and that a successful attempt to abolish that, or what is far more likely, to convert the proceeds to some popular or general object, is certain to be followed by an attack upon the entire land system. The land and the tithe which issues out of it, are so inseparably connected both in theory and practice, that the one cannot be prejudicially affected except to the detriment of the other. When land and tithe vest in one and the same person in the same right and without any intervening estate, the latter merges in the former, and can never again be claimed, no matter into whose hands soever the land may pass. There could not be a stronger instance of the relationship existing between these two kinds of property than this.

Tithe being a payment made, at one time in kind and now in money, under the provisions of various acts of parliament that provide remedies in case of non-payment, is too often regarded in the light of an obnoxious rate, which everyone who has not plenty of means does his utmost to escape. Rates and taxes are not paid willingly in this country because their tendency is to increase, and it is felt that if the authorities are encouraged in their demands they will, sooner or later, exceed the bounds of discretion. There are, and always have been plenty of persons who refuse to pay except under compulsion; who think that it is the privilege of every man to do as he likes, and to decline to join the community in local projects for the maintenance of order, for lighting, paving, and so forth. In the reign of Henry VI., the inhabitants of Chancery Lane, then a sea of filth and mud, created a riot because a rate for the repair of the roads within the Parish of St. Dunstan's-in-the-West had fallen upon them in common with the other Parishioners. Chancery Lane was in their eyes an Elysian field; moreover they objected to contribute to the repair of Fleet Street with which thoroughfare, they had, as they asserted, nothing to do. The right to refuse payment of taxes is sometimes even yet maintained on some such ground as this, and there are in addition many other arguments, plainly establishing the fact that were it not for the bailiff, half the revenue at least, and by degrees the whole, would vanish away. Corporations aggregate cannot, however, be defied with

impunity, and so the taxes are paid and if the tithes were in the hands of the State, they too would have to be paid, in spite of all the opposition that a few hundred or even thousand people here and there could manage to promote. At present the tithes belong, for the most part, to private individuals whether clerical or lay, who do not appear to have much sympathy with one another and who in no sense can be said to be actuated by a spirit of cohesion.

The agitation against tithe first assumed formidable proportions during the time of the Parliamentary wars, and from that day to this has never wholly ceased. In 1653, a majority of the Commons passed a resolution declaring that the maintenance of ministers by tithes should not be continued after a certain early date, but on the whole question being referred to a committee, it was found that the ministers had a legal property in tithe and could not be dispossessed except by violence, and so no further action was taken in the direction of carrying out the resolution. A year or two previously the Welsh had resisted the collection of tithe, but only to be coerced by a strong force of soldiers, cavalry and infantry, who were sent from London to teach them, as it was said, the error of their ways. The tithe impropriators at this time were a board of trustees authorised by the Commonwealth, and commissioned to hand the surplus remaining after payment of a number of itinerant preachers who had been appointed in place of the

ousted clergy, into the coffers of the Exchequer. This state collection continued for three years, and is one of the few instances in which the government of the day has laid violent hands on private property and appropriated it to national purposes. The experience is not encouraging, for not only were homes broken up and the prisons filled with debtors, but a sum of at least £350,000 was collected at an expense of at least £320,000, for only £30,000 ever reached London, from first to last. As precedent is the soul of parliamentary procedure it is to be feared that if ever the tithe question should be settled on any such basis as this, there would be no escaping the tax gatherer. From the parson or the landlord we may obtain time to pay and in some cases even a remission, complete or in part, but the wheels of the state grind exceeding small, and never cease their round.

It is probable that although the tithe agitation reached its maximum at the time of the Commonwealth, there had been some sort of an opposition offered previously, as otherwise there would not have been any necessity for the enormous number of pamphlets on the subject that poured from the press. In 1611, George Carleton wrote his "Tithes examined and proved to be due to the Clergie by a divine right" and in 1638, Joshua Meene, Vicar of Wymondham, in Norfolk, published "A Liberall maintenance is manifestly due to the ministers of the Gospel." In 1611 then, the grounds of the right

to receive tithes were evidently being questioned, and in 1638, the right itself. Both these tracts were written in defence of private property and though the arguments advanced are not such as would commend themselves to any sane person at the present day, being strangely beside the mark and in some respects ridiculous; still it may not be unprofitable to see in what manner the assaults of the enemy were combated in the 17th century.

Joshua Meene commences his defence with part of a text taken from 1 *Corinthians*, ix., 9 "Thou shalt not muzzle the mouth of the Oxe that treadeth out the corne," and proceeds to state that the "Oxe does not necessarily mean only the four-footed beast called by that name, but also 'the ministers of the word that may in no sort be muzzled or have their mouths tyed up with the cruell cords of sacriledge." The argument in support of this contention is no stronger than it should be. It is this simply—"There is no proportionable comparison between those good things brought to their pastors, and these glad tidings brought by their ministers unto them, between the bread of earth and the bread of the heaven, between the meat which perisheth and the meat which indureth . . . Is the expense of corruptible mammon equivalent to the purchase of celestial sermons"? It may be in certain cases, but doubtless the worthy vicar overlooked the objection that sermons are not generally acknowledged by those who deliver them to have been 'purchased.' In another

part of the pamphlet he asserts that "As all sinned in the loins of Adam, so all are tithed in the loins of Abraham," in evident allusion to the arguments of his opponents who asserted that tithing was a Levitical institution which in common with all others of the same creation had been abolished at the time of the new dispensation. In the 17th century, questions relating to tithe were invariably submitted for solution to the words of some text or texts extracted from the Old or New Testaments, and the arguments proceeded upon the meaning of scriptural phrases rather than upon legal and historical bases. Both sides appealed to the Scriptures and neither seems to have thought of applying himself to present time circumstances.

Joshua Meene concludes almost every paragraph with his Corinthian quotation, the better probably to impress it upon the understanding, and if needs must, to burn it into the hearts of his readers, most of whom, doubtless, were like himself, righteously indignant at the heterodox spirit of the age in the matter of tithe. The learned treatises of Spelman and Selden would have furnished the Vicar with sharper, if not brighter weapons, but he could not have seen these, and so he was forced to rely more upon the devoutness of his hearers than upon their intelligence.

The 17th century was, generally speaking, less learned than our own; a few superior intellects gathered the fruit from the tree of knowledge,

and left the average man to glean its leaves; in these days, though the fruit be perhaps smaller and of inferior quality, there is abundance of it and to spare, and no one would think of supporting the right to tithe solely upon Biblical quotations, many of which are not in the least applicable to the conditions under which we live. That "the labourer is worthy of his hire," and "every man has a right to his own," are propositions that can be defended upon common grounds, and it is so proposed to defend them with special reference to landed property and tithe.

The Vicar of Wymondham must have caused the enemy to rejoice as he approached the end of his pamphlet, and to make merry over the fortunate chance of a printer's error that saps all his arguments of their force and nullifies the energy of seventy and more pages. "It behoveth every person," he says, "to put the hallowed things out of his house (*Deut.* 26), to usurp nothing to the offence of his Conscience, to the hinderance of Religion: in no wise to diminish, but rather to augment the minister's mayntenance, remembering ever more this divine precept;"—and here is the crux of his discomfiture—"Thou *shalt* (!) muzzle the mouth of the Oxe that treadeth out the Corne." Surely, if Joshua Meene had been a Bishop, he would have unwittingly supplied the Puritan host with a faction cry for ever-more.

CHAPTER II.

POWERS OF THE 'STATE.' STATE CANNOT TAKE AWAY PROPERTY IT NEVER GAVE. NOR UNDER CERTAIN CIRCUMSTANCES, PROPERTY IT HAS GIVEN. THE ORIGIN OF TITHES. WHY A TENTH MORE THAN ANY OTHER PROPORTION. CHARTULARIES. THE LAWS OF OFFA AND ETHELWULF. THE LIBERATOR'S DILEMMA.

IT is often asserted that what the State gave, it may lawfully take away, and if by the term "State" is meant the body politic for the time being, it would be safe to go much further and to say that it might take away anything from anybody at its will and pleasure. No man's person or property is secure against an autocratic decree, and it is unquestionable that the same authority that broke the power of Charles I. and hurried him to his grave could, were it so minded, order the arrest and execution of the reader of these pages, without alleging any reason greater than that acted by Brennus when he threw his sword into the scale as a make-weight against Roman gold. A nation of scoundrels banded together for purposes of "miscellaneous Devildom" might do anything, and the term "lawful" might even be applied to their proceedings, for legality is only an expression of the will and pleasure of the paramount authority evidenced by Acts of Parliament, written decrees

or rescripts. It is legal to send a man to prison because he cannot, and not because he will not, pay a poor-rate, and it is done almost every day, but there is no justice in such a bitterly ironical proceeding.

From an ethical point of view, and this can never be lost sight of with impunity by any person or body no matter how powerful, the State cannot lawfully appropriate that which it never gave, and which it has permitted the owners to enjoy under its protection, perhaps for years. Neither can it fairly take away from any man what it has given, more especially if it has allowed him to remain in possession of it for an unconscionable length of time; encouraged him to utilise it to the best advantage, taxed the proceeds that have arisen from its employment and, generally speaking, encouraged him to regard it as his own and to make his arrangements accordingly. To assert the contrary would be to open the door to wholesale corruption; no man would be secure from day to day, contracts of every kind would be violated, as and when it pleased either of the parties to allege a change of circumstances.

The only exception to this rule is where the person reaping the advantage acquired it by fraud, and in this case it is perfectly just and reasonable that he should be deprived of his ill-gotten gains, though it is equally just and quite as reasonable that he should not be confirmed in his possession a single year—to put it mildly—after his offence

is discovered. Lapse of time cannot consecrate a wrong, that is to say, make that right which in its origin was unjust, but it may so complicate matters that a number of innocent people may suffer the grossest injustice if it were held to be of no moment. To put a specific case. If A encloses a plot of land which rightfully belongs to another, and afterwards sells it to B, and B sells it to C and so on step by step to K, not one of these intermediate people having any knowledge of the original robbery, it would be hard, to say the least, that K should be turned out of possession at the end of a long period of time at the suit of the defrauded person, who, let us fairly assume knew all about the facts, or could easily have found out all about them with a little trouble. And if this hypothetical case is complicated by the substitution of remote descendants of the original parties, it is obvious that more harm would be done to the community by re-instating the victim's great-great-grandchild and so ousting some equally remote descendant of K, than in letting matters remain as they are. All parties are innocent, and where one of two innocent parties must suffer, he who put it in the power of the guilty person to act as he did must take the consequences, rather than the one who, equally innocent, happens to be in possession.

This is an extreme case of robbery, followed by possession that becomes perfectly just after a long space of time. No argument could justify

the conduct of the thief A, no sophistry could make his record white, but unless we are to hand down iniquity vicariously through the ages, it is impossible that persons who never knew him, nor were party to his act nor gained anything by reason of it (for they bought and paid for what they hold) should be judged responsible for the consequences. That would be adding to the injustice of a hundred years ago and not remedying it. And what should we think of a contention, that supported a person who had stolen and sold something, in stealing it a second time on the plea that being a thief he had no right to sell. If "State" is substituted for "person" we have a reflex of the chief argument advanced by those who say that the State originally sold or gave landed property or tithe which it had appropriated. Even if true, which is denied, that is no reason why the performance should be repeated. There are plenty of people who really believe that all tithes were granted and all landed property acquired by the "State" to the detriment of the people at large, and yet it is upon this assumption that they counsel the State to make a fresh seizure. These innocents would trust the thief that robbed them.

In order to ascertain the relationship actually existing between the people at large, the impropriators, and the governing body in the matter of tithe, it is necessary to glance at its origin, and if it should be alleged at this stage that the people

and the governing body are one and the same, it may be observed that the position of the former becomes much more untenable than it was before, for in that case they themselves are the wrongdoers. The dilemma is this. The "State" in early times either did or did not represent the people. If it did they are bound by the acts of their agent; if it did not then they were robbed and in order to restore the position of affairs to what it was originally the robbery must be repeated. It is only by fixing the blame and consequent responsibility on some dominant faction of the hour, that a case of any kind can be made out against present possessors.

If we are to believe Dr. Cove, who, some seventy years ago, wrote an "Essay on the Revenues of the Church of England," tithe must be the oldest description of property there is. Eden, we know, was free, but according to Dr. Cove, "some unrecorded revelation to Adam" induced him to consecrate a tenth part of his revenue to the Clergy. Where the Clergy came from, or what were their numbers, or to what Church this tithe was paid, is not explained. Equally unimportant from an every day matter-of-fact stand-point though not so ridiculous, is the assertion that as the Levites formed one-tenth of the whole population and had no other inheritance, so by the constitution they were authorised to receive tithes or tenths for the use of themselves, the maintenance of the poor, the repair of the Temple, and other purposes which it is not

necessary to elaborate. What the Israelites did in Judea three thousand five hundred years ago is not very material to us in England now, except in so far as their acts illustrate some fundamental moral teaching which neither time nor circumstance can alter or affect. The laws of the Israelites for the maintenance of Divine worship in the Temple, and the establishment of cities of refuge "for the manslayer, that he may flee thither," which were under the control of the Levites, were of a temporary nature and never intended to be universal, and moreover the Temple, like the Cities of Refuge, has crumbled away.

The early Christians, persecuted and driven about as they were, practised a voluntary giving to relieve the necessities of their poorer fellows, stripped perhaps of all they had, and to this they were enjoined by St. Paul:—"Every man according as he purposeth in his heart, so let him give; not grudgingly nor of necessity," but it would be just as sensible to argue that because the Christians of the time of Nero were compelled to endure privation and subjected to every kind of outrage, so we in this century, should voluntarily suffer or court the same, as it would be to assert that it is our duty to give because the laws of the Israelites counsel charity. Charity is not fettered by precedent, but is a natural disposition of heart which inclines men to think favourably of their fellow-men, be they Christians or savages, and to do them good. Tithes

undoubtedly had their origin in charity, but they are now claimed as a right and it is the right only that is defended in these pages. Dean Prideaux says, "For the first ages of the Church I confess "we find no mention of tithes, because the zeal of "Christians was then such that they gave more "in their voluntary offerings than the tithes could "amount to. So that out of them there was not "only a sufficiency for the Ministers but over and "above, a large portion for the maintenance of the "poor also. And thus, till towards the fourth age "of the Church, all the necessities of it were fully "answered by the voluntary offerings of the faithful, "and what was given by them this way, as it did "much exceed a tenth of their income, so did it "more than suffice, not only for the maintenance of "the Ministers, but for all other occasions also." There is no doubt that in the early ages of the Christian Church, offerings were made in charity and not under compulsion.

But it is with the history of this country that we have to deal, and we find that St. Augustine, who landed on our shores in the year 597 A.D., expressly declares that tithes are required as a debt, though doubtless he meant no more than to say, a debt of obligation due to God, for he continues "he that will not give them invadeth another man's goods," or in other words, allows others to pay more than there would be any necessity for them to pay if all were actuated by the same praiseworthy spirit of generosity.

Parishes were instituted in England by Honorius, Archbishop of Canterbury, about 660 A.D., and prior to that time the Bishops and Priests seem to have lived together, and perhaps held everything in common in the Cathedral towns, from whence they journeyed at intervals to preach to the neighbouring people. When the boundaries of the various parishes were defined, the Priests ceased to go itineraries and were located in fixed places, generally on the estate of the Lord of some Manor who built a Church at his own expense on the understanding that tithes should be levied for its maintenance, that the living of the Priest should be likewise satisfied out of them, and that he (the Lord) should, subject to the approval of the Bishop, have the right of appointing the Priest whenever a vacancy occurred. In this way tithes, then purely voluntary, and advowsons, arose. The Lord of the Manor had the control of the tithes, and the usual course of procedure appears to have been to apportion one-third to the incumbent for his maintenance, and the remaining two-thirds to the relief of the poor, the repair of the Church, and extraordinary purposes connected with the establishment. Some authorities believe that Tithes were originally divided into four parts, one part going to the support of the Bishop, one to the repair of the Church, one to the Incumbent and the remaining part to the poor, but whatever the apportionment may have been in those early days it is clear that the object was to maintain

divine worship and to relieve the necessitous. The tithe was, as the word implies, a tenth of the produce of anything raised on the Parish lands, and was paid by the lord either partly or entirely, as his tenants did or did not contribute to the fund. In any case the lord reserved the right to himself to say how the accumulations should be devoted, and those accumulations more resembled an insurance fund of the present day than anything else to which they can be compared.

A tithe or tenth rather than any other proportion was no doubt fixed upon by analogy to the Jewish law. This seems tolerably clear, though Sir Henry Spelman assigns numerous other reasons, all of them so arbitrary and fanciful that they may be more than doubted. Modernising his quaint language we read as follows :—

"I have not seen any explanation of the cause, why in this matter of tithing the tenth in number rather than any other, should be allotted unto God, and therefore wanting a guide to direct me I proceed cautiously. According to my own belief I see two reasons, one Mystical, the other Political." It is the mystical reasons that illustrate so forcibly the scholastic spirit of his age.—"Touching the first," he continues, "as Plato and the Pythagoreans attributed great mysteries and observations unto numbers, so do likewise all the greatest Doctors of the Church and the very books of God themselves * * * The number 10 is said to signify the First and the

Last, the Beginning and the End; it is *finis simplicium numerorum, initium compositorum;* the end of simple numbers, and the beginning of compound; the first articular number, and the last number of single denomination * * * * As saith Bartholomeus, it worthily represents Christ who is *Alpha* and *Omega*, the Beginning and the End. In these and such other respects, it is also said to be like a circle, of all forms and bodies the most spacious and of greatest capacity, comprehending all other, and itself comprehended of none. In this manner the number 10 represents unto us, the nature of God, the perfectest, the greatest, comprehending all and comprehended of none, the Beginning of the End, yet infinite and without Beginning or End. * * * * All know that the letter X signifies 10, and the learned also know, that it also signifies the name of Christ. Likewise it signifies not only the name but the Cross of Christ." Therefore concludes Sir Henry, though not without many cabbalistic preliminaries which would hardly be appreciated in this practical age—

> "This X of old exprest Christ's holy name.
> And eke the Sacred Tenth which he doth claime.
> Give then to Christ, what's Christ's, without delay
> Give Cæsar, Cæsar's due, and both them pay."

As might have been expected it is not at all an easy matter to trace the origin of tithe nor to follow the earlier stages of its existence and development. A great deal must be left to probability and not a little to imagination, and this is always the case

where a very few historical details have to be arranged chronologically over a long period of time. The gaps are more numerous than we like, and the absence of written documents is hardly compensated for by the more or less curt and often ambiguous references of the chroniclers. Still both sides are agreed that tithes arose in some such way as that described, being at first and for long afterwards purely voluntary payments made for the support of the local minister and the poor, as well as for the maintenance of religious worship in the manor or parish whence they arose. It was undoubtedly open to the lord who had thus built and endowed the church to refuse to maintain it any longer and it was open to his tenants to decline to contribute to the common fund. In the first case the establishment would fail, unless the Bishop came to its assistance. We do not know what the consequences would have been in the second, but in all probability the tenant who refused his quota would not have been regarded with favour either by lord or ecclesiastic, his position might become untenable, and even the other tenants would hardly appreciate the necessity of having to pay more than their proportionate amount owing to the defection of one or more of their number. The conclusion arrived at is, that the payment of tithe by the lord was at first purely voluntary; that by the tenants only nominally so, if opposed to the wish of the lord or the majority.

At a very early date, perhaps simultaneously with

the creation of ecclesiastical parishes, religious houses of many kinds, monasteries, nunneries, abbeys, began to spring up all over the country. The occupiers of these were often religious ascetics, rigidly bound by the rules of the order to which they belonged; they spent their time in devotion and charity, speedily gaining an immense hold on the people. The life they led was regarded as one of noble self-sacrifice, the highest life it was possible to lead and markedly at variance with the turmoil and confusion of the outer world. Almost from the first it became common for devout or repentant men to bestow on the inmates of these religious houses a portion of their property. The lords gave away a part or the whole of their tithe and sometimes also the right of presentation to the parish living—afterwards and still called the "Advowson"—sometimes they gave the land itself as well as the tithe, in which event according to the rule previously referred to, a merger would take place and the lands held by the monastery would no longer be subject to the payment of any dues. To this day much land is exempt from tithe and the reason can in the vast majority of cases be assigned to no other origin than this. These deeds of gift of tithe, land, money or goods were called "Chartularies" and every monastery had its muniment room in which they were carefully preserved, copied and indexed for speedy reference. Thousands of important documents were destroyed at the time of the Reformation, but enough remain

to show the manner in which property of one kind or another was gradually but continuously transferred from the landowners to the religious houses.

After a time it was found that the new owners, being as they were, members of a close corporation, did not always or indeed often spend upon each district or parish the amount received from it. They began to look upon themselves as the owners of these voluntary gifts, though in reality they were simply overseers of the church and the poor, as their donor had been before, and were clearly not entitled, in fairness, to accumulate the proceeds. But they often did so, and in this way some of the larger monasteries acquired vast wealth. Where the house was the patron of one or more livings, it became the practice to present some cleric under their immediate control who might be relied upon not to demand too much for his services. The donations to the poor were hedged round with too much charity-organization and red-tapism to be of the same efficacy as they had been; in other words the parishioners began in time to realise that the old spontaneous system of relief had gone with the local control that watched over their immediate interests, and that they were but a small section of a vast community claiming from a common fund. As it was perfectly open to them—in theory at any rate—to pay their tenths or not as they liked, we may well imagine that many neglected to swell the coffers of a monastery perhaps miles away, whose inmates had very little opportunity

of mixing with the people even had they cared to do so. One of the Canons of the Council of Chalcuth (Chelsea) held in the year 787, makes it clear that on that date, tithes were offerings voluntarily made by the people to the neighbouring monastery, or their local church, as those tithes had or had not been conveyed away by the lord of the manor or other original recipient. It also seems clear that some of the people neglected to pay, for seven years afterwards, King Offa who reigned at that time over Mercia, one of the kingdoms of the Heptarchy, comprising all the midland counties east of the Severn, north of the Thames and south of the Humber, made a law to the effect that his subjects should pay their tithes regularly. The year before, Offa had basely murdered Ethelbert, King of the East Angles (Essex and Middlesex), who was his guest at the time, and he made the first tithe law on record to ease his troubled conscience. As one historian *naïvely* puts it, "Offa did much good to the church, although not a pious man.' In effect he gave the Church power to enforce payment of tithes, if necessary by the aid of the civil law, and no doubt granted tithe out of his own property. The Saxon Heptarchy which had long been declining, crumbled to ruin when Egbert in 827 A.D., defeated the Britons of Devon and Cornwall, and added Mercia to his kingdom of Wessex, nor was it long before he united under his sway all the territories south of the Tweed and founded one powerful kingdom which he called the land of the Angli, Angleland,

England. Egbert died in 836, A.D., and was succeeded by his son Ethelwulf, who had been a monk and was therefore presumably favourable to the Church. Rapin, in his "History of England" says that "Ethelwulf was extremely addicted to religion both by temper and education * * * Bishop Swithun, all in all with the King, confirmed him more and more in his natural bias to a religious life. Above all he instilled into him an extreme affection for the Church and Clergy, wherein the main of religion was then made to consist."

At a Parliament held at Wilton in 854, A.D., Ethelwulf "Endowed the whole English Church with the tithes of all his lands," thus, very probably, extending Offa's law to the whole kingdom of England. The Charter, copied in Dugdale's "Monasticon Anglicanum," is thus translated by Rapin. "I, Ethelwulph, by the Grace of God, King of the West Saxons, &c., with the advice of the Bishops, Earls and all other persons of distinction in my Dominions, have, for the health of my Soul, and the good of my people, and the prosperity of my Kingdom, taken the prudent and serviceable resolution of granting the tenth part of the lands" (*terræ meæ*) " throughout my whole Kingdom, to the Church and ministers of religion to be enjoyed by them, with all the privileges of a free Tenure, and discharged from all services due to the Crown and all other incumbrances due to lay fees. This grant has been made by us to the Church in honour of Jesus Christ,

the Blessed Virgin, and all Saints, and out of regard to the Paschal Solemnity, and that Almighty God might vouchsafe his blessing to us and our Posterity. Dated at the Palace of Wilton, in the year 854. Indiction the Second, at the Feast of Easter."

Whether this Charter was not considered sufficiently explicit or whether something afterwards occurred to render its amplification necessary is not known, but certain it is that in 855 a "third indiction" was presented before the Great Altar in the Church of St. Peter at Winchester. Dean Prideaux gives a translation of this document in his work on "Tithes; their Origin in Public Law," having apparently compiled it from the Chronicles of Ingulph, who was Secretary to William 1st, the "*De gestis Regum Anglorum*" of William of Malmesbury, and the *Flores Historiarum* of Matthew of Westminster who was living in 1307. The following is the full text, as given by the Dean, of this very important document:—

1. "Our Lord Jesus Christ reigning for ever. Whereas, in our time, we have seen the burnings of war, the ravagings of our wealth, and also the cruel depredations of enemies wasting our land, and many tribulations from barbarous and Pagan nations inflicted upon us, for the punishing of our sins, even almost to our utter destruction, and also very perilous times hanging over our heads:—

2. "For this cause, I, Ethelwulph, King of the West Saxons, by the advice of my Bishops, and

other chief men of my Kingdom, have resolved on a wholesome and uniform remedy, that is, that I grant as an offering unto God and the Blessed Virgin, and all the Saints, a certain portion of my Kingdom to be held by perpetual right, that is to say the tenth part thereof" (*decimæ terræ meæ*), "and that this tenth part be privileged from temporal dues and free from all secular services, and royal tributes, as well the greater as the lesser, or those taxes which we call *witerden*, and that it be free from all things else, for the health of my Soul and the pardon of my sins, to be applied only to the service of God alone, without being charged to any expedition, or to the repair of bridges, or the fortifying of castles, to the end that the clergy may, with the more diligence, pour out their prayers to God for us without ceasing, in which we do in some part receive their service.

3. "These things were enacted at Winchester, in the Church of St. Peter, before the Great Altar, in the year of the Incarnation of our Lord 855, in the third indiction, on the nones of November, for the honour of the Glorious Virgin and Mother of God, St. Mary, and of St. Michael the Archangel, and of the Blessed Peter, Prince of the Apostles, and also of Our Blessed Father, Pope Gregory, and of all the Saints.

4. "There were present and subscribing hereto all the Archbishops and Bishops of England, as also Boerred, King of Mercia, and Edmund, King of the East Angles, and also a great multitude of Abbots,

Abbesses, Dukes, Earls and noblemen of the whole land as well as of other Christian people who all approved of the Royal Charter," (*regium chirographum*) " but those only who were persons of dignity subscribed their names to it."

5. " King Ethelwulph, for the greater firmness of the grant, offered this Charter upon the Altar of St. Peter the Apostle, and the Bishops on God's part received the same of him and afterwards sent it to be published in all the Churches throughout their respective dioceses."

It is this Charter of Ethelwulf's that is claimed by tithe abolitionists as the foundation of their claims and as proving beyond doubt that tithe does not owe its origin to the voluntary gifts of our " pious ancestors " but to a positive law of the State. They say that Ethelwulf's law, though differing in form and style very materially from our modern Acts of Parliament, was quite in accordance with the usage of the then times, that it was in fact a decree of the legislature.

It is however denied most emphatically that the " State," no matter how constituted, imposed at any time a tax on the people for the benefit of the Church. The utmost it did was to attach a civil remedy for the recovery of the tithe already due, in case payment was refused. The advocates of confiscation assert that tithes were first *legally created* and imposed on the whole kingdom by Ethelwulf, Offa, King of Mercia, having previously *legally created*

tithe so far as his own kingdom was concerned. Dr. Burn in his "Ecclesiastical Law" says that Offa "made a law whereby he gave unto the Church the tithes of all his kingdom * * * * but this law of Offa was that which first gave the Church a civil right in them by way of property and inheritance," and that "Ethelwulf about sixty years after, enlarged it for the whole realm of England."

But tithes had been paid long before the time of Offa, *e. gr.* in the reign of Ethelbert, A.D. 566, and Ina, A.D. 688, and moreover we have no positive evidence of the precise wording of Offa's law; it may have constituted a direct and original grant, though we may well doubt this, nor is the point very material, for it was Ethelwulf's law that first affected the whole kingdom and is claimed by all anti-tithe agitators as establishing the right of the clergy to tithes in England. It is upon the faithfulness of this document that their whole case rests. They say (*a*) that it was in effect an Act of Parliament, made in accordance with the usage of the times, (*b*) that it was a gift or grant of property belonging to the nation. Both these assertions are denied, on the following grounds :—

(*a*) *That it was in effect an Act of Parliament, made in accordance with the usage of the times.* Acts of Parliament in Saxon times were Acts passed by the Kings and a general assembly called the "Wittegenemote" or for short "Witan." Ina's law was enacted "with all my Earldormen, and the most

distinguished 'Witan' of my people," and the laws of Alfred and all other Saxon Kings up to the time of the destruction of the Heptarchy contain a similar preamble. An analysis of Thorpe's "Ancient Laws and Institutes of England," prepared in 1840 at the request of the Public Record Commissioners, from the original documents, shows that the Saxon Kings were not autocrats, but were answerable to a perfectly defined constitution. The wording of the so-called "Law" of Ethelwulf combined with the fact that it was witnessed by the Archbishops and Bishops of England and other notables as stated in Clause 4, abundantly proves that it was not an Act of Parliament which the people were in any way bound to conform to, but a Royal Charter. Kemble who has collated some hundreds of these Anglo-Saxon Charters, proves by example that they invariably consist of (1) The invocation. (2) The Proem, or general observation, inculcating the virtue of charity, the vanity of earthly possessions and so on. (3) The Grant or substance of the gift or order. (4) The consequences of refusing to obey. (5) The date. (6) The "teste" or witnessing part. These are the six chief characteristics of an Anglo-Saxon Charter, and all of them, except the fourth, are exemplified in the "Law" of Ethelwulf. Furthermore it is called a Royal Charter (*Regium Chirographum*) on the face of it (*see* Clause 4) and it was offered upon the Altar of St. Peter the Apostle by the King himself, showing that it was a personal act of piety and not an act of

the nation. Lappenberg in his "England under the Anglo-Saxon Kings," Vol. 1 p. 198, says that "to regard this donation as the origin of Tithes is an untenable interpretation partly refuted by the very uncertain tenor of apparently fictitious Charters, and partly by the much earlier introduction of Tithes, by the assignment to the Church of older imposts belonging to the King and other lords of the soil." Holinshed says, when speaking of this Charter—"In the 19th yeare of his reigne, King Ethelwulf ordeined that the tenths or tithes of all lands *due to be paid to the Church* should be free from all tribute duties," &c. showing clearly enough that, so far as he understood the matter, tithe was due already and that one of the objects of the Charter was to release the Church from its liability of "paying tribute to his coffers." Moreover the grant was not of tithes at all but of lands, that is to say lands which were the private property of the King. To bind the lands of the people was not in his personal power, for it could only be done under the authority of the "Witan." It is perfectly clear that this was not an enactment of public law in accordance with the usage of the times, but a private gift.

(*b*) *That it was a gift or grant of property belonging to the nation.* As already stated no Anglo-Saxon King could dispose of property belonging to the nation, though he could dispose of his own private and personal property in any way he pleased The method of accomplishing this was either to hand

it over bodily to the donee, if it were personal property capable of transmission from hand to hand, but if not, then by gift in writing or in other words by means of a Royal Charter. Etymologically speaking, every written document is a Charter, and a Royal Charter, is a written document subscribed by a reigning Sovereign. By his Charter, Ethelwulf granted "*decimæ terræ meæ*,"—tenth parts of my own land. The form of the document, even if this *meæ* had been omitted, would show that the King's intention was to bind his own property only, and that it could not from the very nature of its arrangement and construction have possibly affected the property of the people.

The tithe law of Alfred, son of Ethelwulf, was passed with the consent of the "Witan" and was part of a code of law based upon the unwritten laws of the Saxons. It established the Christian religion, which thus became engrafted on the law of the land, and has so continued to this day. In order to provide for the maintenance of the Schools and Colleges he had founded and to ensure the permanency of the national religion, and the support of its ministers, he provided a permanent fund and re-enacted the ancient law of the land—that Tithes should be paid as they had been before. He never imposed new tithes or charged them on national property. The words are "If anyone with-hold tithes, let him pay lah-slit among the Danes, "wite" among the English. If anyone give not plough alms, let him pay lah-slit

among the Danes, "wite" among the English." If either Ethelwulf or Alfred ever made an original grant of tithes not merely so as to bind themselves and their own property, but the whole of the people and their property, they certainly did not do so by these documents, which labour under the cardinal objection that no details, such as every new creation necessitates, are given. Tithes of what? When to be paid? To what authority, Parish Church, or Monastery? These and numberless other very important points are absolutely unprovided for. This objection applies equally to Athelstan's Charter of 924, to Edmund's law of 944, to Edgar's law of 967, and to the laws of Ethelred (1008 and 1012) and Canute the Dane (1032), all of which, so far as tithe was concerned, were either re-enactments of previously existing laws to the same effect or else provided additional remedies for the recovery of what had long been Church property. If then the nation did not grant these tenths, from whence did they arise? There is only one answer. From the gifts of private benefactors, or "pious ancestors" as they are sometimes called, made from time to time since the days of Augustine.

Even assuming for a moment, contrary not only to reasonable probability but to the express words of Charters and Acts (which though perhaps not in existence now, were evidently seen by the old chroniclers who quote them, and who it must be remembered had no possible interest in perverting

the facts), that these documents were in reality Acts of Parliament; even in this case, the moral right of the present tithe owners cannot be equitably questioned, nor their legal right at all. Sir William Harcourt, who is or was a tithe hater, said he did not dispute the owners' title (speech quoted in the *Liberator* newspaper, September 1889, page 132) but what he did object to was supplying them with any additional remedy. Even if the Charters quoted are not Charters at all but legitimately passed Acts of Parliament, the arguments of the abolitionists are as forlorn as they were before.

At the time of Ethelwulf and for long afterwards, the State was represented by the King, nobles, and high county dignitaries; there was no middle class, the remainder of the people being either dependents or serfs. Even amongst them, there were no doubt many grades, and some would be richer than others, but taking them in the mass they were represented in the council of the nation by their superiors. The lord of the manor on which they dwelt, or powerful ecclesiastic or nobleman to whose cause they had attached themselves and whose protection they claimed when encroachments were made on their person or property was their deputy. According to the liberators view of the case, "the Archbishops and Bishops of England, as also Boerred, King of Mercia, and Edmund, King of the East Angles, and also a great multitude of Abbots, Abbesses, Dukes, Earls and noblemen of the whole land and the other

Christian people," doubtless landowners, must have constituted the "State" (or "Witan"); and if so, when assembled in council, they could do as they liked, levy taxes or remit them, declare war, and bind the whole nation by their orders. Under these circumstances it cannot be questioned that the law of Offa as re-enacted and extended by Ethelwulf was perfectly legal and bound the people even though they did not agree with it. In our England of to-day nine-twentieths of the population obey laws made by the remaining eleven-twentieths, but they would not do so unless they were forced. Our constitution too, is defective, in that a very large minority of the people are absolutely unrepresented in Parliament, but they are nevertheless compelled to submit to the dictatorship of a majority only a little more numerous than themselves. If the arguments of some of the tithe converters were followed to their logical conclusion and applied to decrees of the "State" as it exists at present, an unrepresented minority would be perfectly justified in repudiating any parliamentary enactment to which they objected, whenever the opportunity of doing so arose. But we know that this is far from being the case, for if it were, every new government that came into power might spend its years of office in undoing what the previous government had done and the whole country would be at the mercy of a political game of see-saw.

Assuming therefore, though only for the sake of argument, that the laws of Offa and Ethelwulf were

legally binding on the people, and that they did not merely direct the payment of tithe already due providing a civil remedy for the recovery of the same if withheld, but absolutely created it, still even then the arguments of our opponents are lamentably weak. In our view, their strongest position would be that such laws, made as they must have been by an aristocracy out of touch with the people, were not binding on the latter, whose property was forcibly taken from them against all right and justice.

It may be advisable to amend the law relating to real property, including tithes; there is plenty of room for improvement; but it must not be done at the expense of those who have trusted the promises of the "State" and spent their money and incurred obligations on the faith of representations made to them not on one or two occasions only, but over and over again during the course of many centuries.

CHAPTER III.

PRIMARY AND SECONDARY EVIDENCE. THE "LIBERATION SOCIETY." IN WHAT CASES A CHARGE IMPOSED BY AN ANCESTOR IS BINDING ON HIS DESCENDANTS. WILLIAM THE CONQUEROR'S LAW. THE REFORMATION. LAY IMPROPRIATORS. TITHE ALWAYS USED FOR THE SAME PURPOSES. EFFECT OF ABOLITION. SOME QUESTIONS ANSWERED.

IF tithe be national and not private property, it would be difficult, if not impossible, to argue against the right of the "State" to do as it pleased with its own, but this has not yet been demonstrated. It must be remembered that the onus of proving that tithe is national property lies upon the party asserting it to be so, and no obligation is thrown on anyone to prove that what he holds was granted from private sources, until the opposite contention has been *primâ facie* made out. The abolitionists have not yet done this and it is extremely unlikely that they will ever be able to do so now, every possible source having been investigated and every known available document read for the purpose of founding arguments on which to base an attack not merely on the tithe system but on the establishment. Our strongest opponent is the "Society for the Liberation of Religion from State Patronage and Control," commonly called the "Liberation Society." This

body has thoroughly mastered the subject it has made its own, and in its numerous publications has said everything that can be said for the contentions it champions. No impartial person who has studied both sides of this great question, could be convinced by the arguments it advances, and the society must know that from a legal and historical, to say nothing of an ethical, standpoint, the difficulties it has to surmount are insuperable. Inferential arguments are therefore frequently employed to compensate for the absence of solid material. Primary evidence being conspicuous by its absence, secondary evidence is proffered, contrary to every principle of law, logic and common sense. No court of law and no logician will accept secondary evidence of any matter or fact, until the absence of primary evidence is satisfactorily accounted for. If a document is lost, evidence of its contents may in certain cases be given, but the fact of the loss must first be proved. In the case of very old documents which are known to have existed but which have not been seen for centuries the loss is presumed, and the secondary evidence of the Chroniclers is the best evidence that can be obtained. In accordance with this well-known principle, the Charter of Ethelwulf, itself no longer extant, is proved by the account given of it by Ingulph, William of Malmesbury and Matthew of Westminster, who had no reason to distort the facts and whose evidence, known to be reliable in other particulars must be presumed to be so in this. Their

evidence is opposed to the "National Property" theory, and no evidence worthy the name has ever been brought forward by the Liberation Society or any other body, or by any person, to show that tithe did not arise from private gift but from public sources.

When in August 1889, a tithe bill was in committee of the House of Commons, the whole debate was nevertheless conducted, on one side at any rate, on the assumption that the nation was the party primarily interested. Mr. H. Gardner asserted that tithe was originally a tax upon produce and had become an absolute and definite property; but it was, he said, "the property of the nation and of the nation alone, and the first condition of a scheme of redemption must be the recognition of this inalienable property of the public." Mr. Labouchere regarded tithes as national property and thought they ought to remain as a first charge on the land; he strenuously opposed redemption in any form as that would be to hand over the proceeds to the *quasi* owner of the tithe. Other speakers, including Mr. Osborne Morgan might be quoted to the same effect. Opinions such as "an overwhelming majority of the Welsh people looked upon tithes as a property to be used for the purposes of the whole nation"—"Tithes are national property" —and so on, are so explicit as to be unmistakeable. In the eyes of these gentlemen, tithe belongs as of right to the people at large, who either parted with it voluntarily or must have been unjustly deprived of it in days when they were too weak to protest. There

is no evidence to warrant such a contention, but the assertion is so often made that it is advisable, though not strictly necessary, to pursue the subject further.

It has been shewn that if the nation, "State," or whatever term may be employed to denote the body politic ever did grant the right to receive tenths to a private person or body, they did so of their own free will. Further, it does not need to be proved, for it is admitted all round, that some tithe was granted and directed to be paid by private persons by way of endowment, which tithe has been paid for hundreds of years and is being paid now. True there are people who argue that a man has no right to bind his descendants or successors in this way, but unfortunately that is just what the owners of every kind of property, real or personal, are continually doing. A man mortgages his house or pledges his silver plate and the amount borrowed is a charge on the property into whosesoever hands the same may come. He himself may have died long years ago, but his heir-at-law, devisee, legatee or vendee must go on paying the interest, and the property remains a security in the hands of the mortgagee or his representatives for the principal, interest, and expenses. The successive owners of the property take it subject to the charge, which subsists literally and in fact for ever unless it be paid off, either voluntarily or after an enforced sale. The analogy of one phase of the tithe question to this and other examples is clear enough, assuming that the original grantor was justified in binding his

freehold and himself to pay the tithe he had created and assigned. If not, then he had obviously no right, legal or otherwise, to bind his descendants.

After the Battle of Hastings, William of Normandy was crowned by the Archbishop of York, having previously taken the oath invariably subscribed to by the Saxon Kings. Rapin thus states the effect of it :—"That he would protect the Church and its Ministers; that he would govern the nation with equity; that he would enact just laws and cause them to be strictly observed; and that he would forbid all rapines and unjust judgments." Malmesbury adds that he "promised to behave himself mercifully to his subjects and govern the English and Normans by the same laws." Immediately after taking the oath the King called a Parliament composed of twelve men chosen from each county, to ascertain what the laws of the Saxons were, and these laws being defined became the basis of what is known as the "Common Law" of England. It is and always has been an axiom that the common law must be administered by the judges as they find it, they can neither add to it nor detract from it, that being the jealously guarded prerogative of the paramount or ruling authority. In our time it is the Lords and Commons in Parliament assembled who alter the Common Law as the necessity for doing so arises; during the Protectorate of Cromwell, the Commons might do so at their pleasure, and at different periods of history, as the constitution developed, different rules and

orders were in force to regulate its application. We are to this day, more often than not, governed by the old Common Law, modified by Statute Law, but sometimes absolutely unaffected by it.

One of the laws in existence at the time of Edward the Confessor, which was expressly declared by William to be part of the Common Law of the land ran as follows :—"Of all corn the tenth sheaf is due to God and therefore is to be paid unto Him. If any one shall have a herd of mares, let him pay the tenth colt, but if he have only one or two mares, let him pay a penny for every colt which he shall have of them. In like manner if he shall have many cows he shall pay the tenth calf; if he shall have but one or two cows he shall pay a halfpenny for every calf. And he who shall make cheese must give unto God the tenth cheese, but he that shall make none must give the milk every tenth day. And so likewise must be paid the tenth lamb, the tenth fleece, the tenth part of the butter, and the tenth pig. And so, in like manner, of the bees the tenth part of the profit, and so likewise of woods, of meadows, of waters, of mills, of parks, of ponds, of fisheries, of copse, of orchards and gardens, and of trade, and of all things which the Lord shall give, the tenth part is to be rendered to Him who giveth unto us the other nine parts with that tenth. Whosoever shall withhold this tenth part shall by the justice of the Bishop and the King, be forced to the payment of it, if need be." There was no new creation here but

only a confirmation according to the usual practice of the early Kings, who on ascending the throne were accustomed to publicly acknowledge and ratify the acts of their predecessors. Thus the Great Charter of John was confirmed by his successor Henry III., that being the first act of his reign, and also by Edward I.

The *obligation* to pay tithes was no new thing, in fact this direction or law of William the Conqueror was merely confirmatory of the laws of Offa, Ethelwulf and the other Saxon and Danish sovereigns who succeeded them. Where the State, as in this instance, commanded tithe to be paid, it did not impose any liability to pay fresh tithes but merely recognised the right of the owners to receive what had already been granted. This decree of the Conqueror, at any rate, bound the King himself, the whole of his Norman retainers and the entire mass of the people, and it is begging the question to say that the people had no voice in the matter. At the period in question the country was governed in a certain manner, and it has been governed ever since on a plan that has varied scores of times and has been continually developing to suit the changes of time and circumstance. If all the laws that have ever been made by any authority other than Parliament as at present constituted, are to be challenged and swept away, the whole of the Common Law as defined by William's commission is unstable, Magna Charter must go, and most of the Mortmain Acts

are a dead letter. The truth is that the ruling authority for the time being is competent to make laws in its own way, and that those laws are binding universally or until they are altered by some other authority possessing an equal or greater power. Further, any alteration can only constitutionally be made with a due regard to the rights which have been acquired under the laws subsisting for the time being, such rights being in the nature of private property which it would be grossly immoral to prejudice. Any other rule than this would necessarily render our responsibilities in the last degree uncertain; new offences, for example, might be created by Act of Parliament and people might be punished for something they had done before the Act was passed. There would be no end to the shifting of obligations, nothing that we could do would be right, and no property that we might acquire would be safe a single day if the law were liable to be altered without regard to acts done under its authority.

For this reason the legislature, whatever its form, has always been careful to recognise the validity of prior decrees lawfully made or enactments lawfully passed, and in the case of tithe the directions of William the Conqueror, have been expressly recognised on numerous occasions. The Tithe Commutation Act of 1836, which substituted a rent charge for tithe in kind, impliedly admits the right of the tithe owner to receive his dues. It is in effect nothing more than a mere declaration of previously

existing rights, and all it did was to abolish cumbrous and out of date processes for enforcing them in favour of others more suitable to the times in which we live. It is freely admitted that tithes, like taxes and most other obligations imposed upon us, are objectionable in the sense that we would, most of us, avoid them if we could; when the taxes are light we are pleased, when they are heavy, we grumble, but in any case payment must be made, for the State has a right to them, and is able and ready to enforce its demands, if need be. Tithes are, for the most part, in the hands of private individuals or corporate bodies, who are as anxious to collect them as the State is to obtain payment of the taxes, but being weaker and less able to protect themselves, and moreover lacking the prestige that is the heritage of the body politic, are not infrequently defied under all sorts of pretexts, any excuse being notoriously better than none.

At the time of the Reformation there were no workhouses and poor rates were unknown. The poor were maintained by the clergy out of the revenues to which the tithes contributed not a little, and this, no doubt, was the reason why gifts of tithes and lands were continually being made to them. The monasteries were almshouses and schools, and every abbey had its resident schoolmaster, who, without any charge whatever instructed the youth of the neighbourhood. The "Chartularies" or deeds of gift, commonly specified the use to which the donations were to be put, but whether the right to tithe was

based on these documents or arose by prescription, the duty of the religious houses was clear. Down to the time of the Reformation, the Priests taught the people, clothed and fed the necessitous, maintained themselves, supported the monasteries and churches, and provided for public worship throughout the length and breadth of the land.

Henry VIII. believing, or affecting to believe, that the monasteries, so far from being religious houses, were nothing better than dens of iniquity, and anxious no doubt to ruin the Papal power, and so obtain control of immense revenues, inspired an Act of Parliament passed in November 1534, which declared that "the King's Highness was the Supreme head of the Church of England, and had authority to reform and redress all errors, heresies and abuses in the same." This enactment, so carefully and cautiously worded, was perfectly constitutional, but it would not have been so had it run for example as follows:— "The King's Highness is the supreme head of the Church of England and entitled to all the revenues of the same." That would have involved the forcible transfer of property from legal owners existing at the time. The old device of monarchs who coveted their subjects' goods, was to formulate a charge of treason or felony, and by the law, a forfeiture of all their possessions followed conviction. This, truly, was a scandalous oppression, opposed to every principle of equity, but the distinction which even a monarch was bound to observe is sufficiently obvious. Henry's

object was to convict the ecclesiastical establishment of as many crimes as possible and then to reform it. He had a right to do this, under the authority of Parliament, if he could, and he did it, as we all know.

In 1535, Cromwell, who had been appointed Vicar General, proceeded to make a visitation of the monasteries, which were pronounced by him to be shamelessly corrupt. Very likely there was good ground for this assertion, but whether there was or not, the result was that first the smaller institutions, and afterwards the larger ones, were suppressed. The revenues that had belonged to them were thus left without an owner, and what more natural than that the King, as head of the Church, should acquire and redistribute them for the good of the reformed Church to which they belonged. Henry took the property, including the advowsons, and proceeded to distribute it in a manner agreeable to his inclinations, though by an Act (25 Henry VIII.), it was declared, that neither by that Act nor anything therein contained was it to be understood that the Crown or the Realm intended to vary from the Catholic Faith of Christendom, thus showing that the changes in the relationship between Rome and the Church and Realm of England, were not the result of a rupture with the Catholicity of Christendom, but the result of a renunciation of usurped Roman supremacy in this country, with all the tyrranies, abuses, evil customs and errors involved therein. (Case for

Establishment, S.P.C.K. p. 62).

A part of this property he gave away to private individuals, which he had no right to do, some part he sold, and in some cases where both land and the tithe which was payable out of it, were given or sold to the same person, it was declared that he should henceforward hold the land tithe free. The Church got a portion of its own again, the tithe or land being in that case vested in the rector to whom it was given and his successors in the office, for his maintenance and the relief of the poor. Hence, tithe was no longer the exclusive property of the Church, for laymen were permitted to hold it and had remedies for the recovery of it if withheld. All tithe in the hands of laymen, if it is to be taken from them, notwithstanding the fact that in many cases their predecessors in title purchased it outright, or it may be that they have purchased it themselves, and notwithstanding the legality of the transfer and the length of undisputed possession, should be given back to the Church. It is maintained, however, that the various Acts of Parliament which have been passed since the reign of Henry VIII., recognise the legal and moral title of all tithe holders, and if this is so, their property cannot be taken away from them except under conditions which involve compensation. It is sometimes necessary to compel a man to sell what he is unwilling to part with, as for instance under the Land Clauses Acts, for otherwise the obstinacy of an individual might divert or

altogether bar a projected line of railway, or hinder or frustrate any municipal improvement, but in every case in which this is done, the greatest precautions are taken against injustice, and the evicted owner has rights which practically include compensation for the inconvenience to which he has been put. He can claim the right to be heard before a jury, and is certain of receiving the full value at least, of the property which he has been forced to relinquish under highly exceptional circumstances for the public good.

It is said in some quarters that "inasmuch as Parliament has over and over again asserted its right to vary the uses to which the tithe fund shall be put, it can do so again." For instance, Henry VIII., as we have seen, gave or sold some of the tithe to laymen who had never at any period of this country's history, been in possession of such property before. In Edward VI's. reign an Act was passed directing all incumbents to use the new book of Common Prayer. Those who refused were ousted from their benefices and the tithes were paid to their successors. In Mary's reign the Papists obtained the ascendancy, and Priests who would not say Mass were ejected. In Elizabeth's reign the Papists were turned out, and at the time of the Commonwealth the use of the Book of Common Prayer was prohibited, and Independent, Baptist, and other Dissenting Ministers, began to take the place of the Ministers of the Church of England. At the Restoration the Prayer Book was re-introduced, and those Ministers who

would not consent to use it were summarily ejected. All this is true, but those who argue that "Parliament has over and over again asserted its right to vary the uses to which the tithe fund shall be put" and adopt these facts as proof of the assertion, must be strangely illogical. In none of these instances, except the first—the assignment to laymen—did Parliament alter the tithe usage; it turned out of the benefices clergymen who did not see their way to conform to the orders of the head of the Church, but the tithe was payable for the same purposes as before, viz., the support of the poor, of the Incumbent, the repair of the Church and the performance of Divine worship. There are many who think that lay-impropriators hold a false position and perhaps they do, but they have been too long in possession to be disturbed now, and moreover the dispute, if any, is between themselves on the one hand and the Church on the other, for the latter would, in the event of a re-coversion claim these tithes as property of which it had been unjustly deprived. Of the tithe fund about £765,000 is in the hands of laymen, about £200,000 is devoted to educational work, £680,000 to the support of the Cathedral Establishments, and £3,000,000 to the support of the Parish Clergy and the poor. These are approximate figures, but near enough to show that out of a total of nearly £4,650,000, only about a sixth is devoted to any other purpose than it has ever been since the dawn of Christianity in England.

If the Church were disestablished, the question would arise as to what should become of the endowments, and it may be that a considerable proportion, or even the whole of the tithe fund would be confiscated, but let no one think that the obligation to pay tithe would cease. The precedent followed in Ireland would doubtless be followed again, and in this event the land would be saddled for ever with a veritable tax, which would here, as in the "distressful country," be collected by Government officials, who could not grant either remission or time to pay even if they would, nor perhaps would they if they could. Other consequences would inevitably follow, and it is more than questionable whether, if the tithe were seized and diverted to other channels, the people who would have to pay it would be any better off than they are now. The alternative is to abolish tithe altogether or what amounts to much the same thing, the remedy for recovering it. It is acknowledged, however, that what at first sight appears to be a concession to the tithe payer, would, in reality, amount to a gift of more than £4,000,000 annually to the owners of the land, and such a solution of the difficulty is therefore not to be thought of for a moment.

That which belongs to a corporation can be diverted by the simple expedient of first suppressing it, but private persons cannot be suppressed, and the £765,000, part of the tithe fund now in the hands of lay-men is from every point of view, legal and historical, as safe as any property can be, for there

is no precedent that will justify either State or individual, in confiscating private property, whether it consist of tithe or anything else, except, as we have seen, in a very few cases of public necessity and then only under conditions extremely favourable to the party dispossessed.

It will now be convenient to combat some miscellaneous conclusions arrived at by those who allege that tithes, though in the hands of the Church or private individuals, are really national property. They ask—

1. *If the pious ancestor theory be true, where are the documents recording the gifts they made?* There are numbers of "Chartularies" in the record office and elsewhere, which can be seen by anyone who chooses to look at them. The vast majority were, however, in common with much other property, wilfully destroyed at the time of the Reformation. In the case of very old tithe documents, it is not surprising that they should have disappeared, since most other documents of an equal age, irrespective of their contents, are also missing.

2. *How is it that so far as the legal obligation to pay tithes is concerned, the law knows nothing of the "pious ancestor," nor refers to him in any way?* Because the law provided the remedy only, and took tithes in the mass without referring to particular grants.

3. *If the Bishop when he is appointed has, kneeling before the Sovereign, to declare "I do acknowledge and confess to hold the Bishopric of ——— and the*

possessions of the same entirely, as well the Spiritualities as Temporalities thereof, only of your Majesty and of the Imperial Crown of this your Majesty's realm," *is not this an admission that the Episcopalian Temporalities belong to the State?* It is an admission that they belong to the Sovereign as head of the Church.

4. *Then how does it happen that the State frequently interferes, as in* 1836 *for example, with the method of paying tithes?* By constitutional usage the functions of the Sovereign in his capacity of head of the Church, are directed by the State. The Parliament acts as the representative of the King alone in these cases.

5. *Is not the fact that every inhabitant of the country may claim the offices of the Church of England and the services of the clergy a proof that the Church is supported by National funds?* No, it is a proof that the Church is the Established Church of the country and nothing more. The obligation, moreover, is one that it took upon itself more than a thousand years ago, and has never repudiated.

6. *Does not "Church Property" differ essentially from the Property held by the Nonconformist bodies?* Yes, in that the Sovereign, through his Parliament, has a constitutional right to direct the expenditure. The Church of England is a Church Established, *i.e.*, protected, by the Law. In other respects it does not differ, for the "Dissenters' Chapels Bill," is one clear instance of the authority of Parliament, even *qua* Parliament to regulate the property of Nonconformist bodies, if it chooses to do so.

CHAPTER IV.

LAY IMPROPRIATORS. NONCONFORMIST ENDOWMENTS. THE "DISSENTERS' CHAPELS BILL." TITHE CAPITALISED ON SALE AND CONSIDERED IN LEASES. THE POOR LAW SYSTEM. GIFTS TO THE CHURCH. ENDOWMENTS A NECESSITY.

IT appears clear that if lay property in tithe is to be discouraged, the owners have a fair claim to be compensated, and that for many reasons. Very few of these tithes have remained from the time of Henry VIII. until now, in the possession of the descendants of the first proprietor, though we have yet to learn that inheritance is robbery, or that if such an instance should be discovered, that would be any reason for viewing a perfectly legal course of descent in the light of so many individual instances of private aggression. Rightly or wrongly, lay tithes or rather the rent charges, which by the Act of 1836 are substituted for tithes in kind, are bought and sold like any other description of property; the purchaser pays his money and enters into possession under the authority of the law, he pays the Government a stamp duty of a half per cent. on the amount of the purchase money, they accept it and impliedly warrant him peaceable possession against all the world until some other person, with a better legal

title than himself, ejects him by due course of law, or until he sells the property again. The lay owner of great tithes, which consisted in general of corn, peas, beans, hay and wood, is compelled by law to keep the chancel of the parish church in an efficient state of repair, and he ought morally, no doubt, to further the interests of the poor within the parish. Some lay tithe owners do this; others on the contrary seem to regard the rent charge in the light of an ordinary ground rent which they have bought at so many years purchase, and the proceeds of which they are perfectly entitled to use as they please. If the Church of England were to be disestablished and disendowed to-morrow, it is very difficult to see how the lay holders of tithe could be dispossessed without a distinct blow being aimed at every other species of property in the country.

The property of the Church is really not so secure as these lay tithes, for the fate which befel the Irish Church, may, some of these days, be regarded as a valuable precedent for renewing operations on a gigantic scale in England, and we may be very well sure that this precedent would be followed to the letter, the tithe instead of being extinguished on terms favourable to the agriculturist, being vested in the State and regarded thenceforward in the light of a tax which, if people cannot or will not pay, has to be collected by force, and without abatement. It is extremely unlikely that any better terms would be obtained by the English liberationists, for the Church

as established here is an extremely powerful organisation, supported by wealth and influence which were never native to the soil of Ireland. Moreover, Churchmen in this country are not as supine as they once were, they seem at last to have a glimmering of suspicion that they are objects of envy to somebody, and are beginning to grow uneasy in consequence. If the English Church and her supporters could not obtain as favourable terms as the Irish Church and her supporters, it would be because they were altogether given over to indolence, and this we know is very far from being the case at the present time. It is only reasonable to suppose that the task of overthrowing the Established Church would be a long and arduous undertaking, which would have no chance of success at all if the inhabitants of England and Wales were alone consulted in the matter, and that whatever terms were made would not be entirely to the advantage of the aggressors. No wonder that sophisms like the following are introduced to bolster up a bad cause, "The Established Church is * * * in a similar position to that of the British Museum or the National Gallery; and as the private gifts of those institutions become national property equally with the purchases made with the nations money, so it is practically, and in law with the gifts of individuals to the Church Establishment. It is true that in the case of the Established Church, the gifts are made not to the "Church of England" as such—which owns no

property and is incapable of holding any—but to particular parishes or dioceses. But as in each case the gift is in law made for the benefit of the whole population of the parish or diocese, and the aggregate of their populations constitutes the nation, the gifts are in effect made to the nation itself." ("The Church Property Question," Liberation Society.)

The interests of Nonconformists are, although they do not seem to know it, closely bound up with those of the Church. In the first place, many lay tithe holders are Dissenters; some are Roman Catholics. There are Nonconformist as well as Church Endowments, and if one must go so should the other. The trustees of the chapel must suffer for the good of the people, equally with the Commissioners of the Church. They think not, but it is more than questionable whether State interference is at any time a great respecter of persons, especially where the profit to be derived from a drastic measure is an object of interest. We should certainly side with the Dissenters in this matter, holding it to be a shameful proceeding that the gifts of their fathers, should be appropriated for purposes never contemplated by the donors, and perhaps utterly subservive of their original intention.

Some Nonconformist endowments are well worth appropriating and would provide a welcome addition to the salaries of School Board, Poor Law and other officials. The Dissenting property in Sheffield, for instance, was worth nearly £66,000 a score of years

ago, and is probably worth £100,000 now, including of course, land, buildings and endowments, which last are estimated to yield a capital sum of about £10,000. The "Dissenters Chapels Bill," set out in full in the Appendix, has given Parliament a precedent, which it will, when it suits its purpose, regard as a right to deal with Dissenters' property for the good of the people at large. In the language of a petition presented by the General Assembly of general Baptist Churches, the object of this Bill was "to quiet a variety of Dissenting congregations in the peaceable possession of their places of worship, and other foundations which have belonged to them, in many instances, for more than a century, and to prevent the interference of other classes of religionists devoted to subscription to human articles, and the consequent violation of the liberal principle in which your petitioners and other like-minded Christians are associated." The petitioners then prayed for the assistance of Parliament as Vortigen did for that of Hengist and Horsa, and like that Prince got it. It remains to be seen what proportion of Non-conformist property their deliverers will claim as a reward for their services. The "Dissenters' Chapels Bill" may have worked well in practice and answered all the expectations of its promoters, but it is very questionable whether the State was wisely appealed to do all in a matter that in no way concerned it.

Attached to the Petitions which were received from many Dissenting congregations all over the king-

dom was a tabular analysis, showing the date of the origin of the congregation, the evidence of ownership in each case, the evidence of opinion and the repairs and accretions that had been made to structural property from time to time. It appears from this that in Leeds, Rotherham, Bury, Liverpool, Bolton, Nottingham, and in fact in every important town in the kingdom large sums of money had been given as endowments of or spent on chapel property during the greater part of the century. It is no more right that this should be diverted than it is that Church property, which is derived from precisely similar sources, should be diverted, but if it is right in either case then it is also right in the other. According to the arguments of one section of the community, it is better that a poor man should be fed and helped on his way by the State, than that a whole Church or Chapel full of self-satisfied people should be exhorted whenever they chose to listen, to do what they have not the smallest intention of doing, namely, to exercise a little charity outside the four walls of their meeting house. This is a belief that it only needs a national calamity, followed by an influx of a disproportionate number of poor men, to accentuate, and any religious body that has anything to lose will be affected by it.

It is wrong to regard tithe in the light of so much national property granted by the State which the same authority may take away and appropriate in any manner it thinks fit. We have seen that this

is no more true than is that other unfounded assertion to the effect that the State established the Church. The fact is that the Church was re-organised, consolidated and established on an independent basis by St. Augustine in 596, and continued absolutely free to act as it pleased, until the interference of the Popes and the intrigues of their agents rendered it absolutely necessary for the State to interfere and prevent the Church from being used for political purposes. Tithes were the voluntary offerings of private individuals, to which the State added a civil right of possession. It is distinctly denied that it ever introduced or granted them, or that a single acre of national land has ever been handed over to the Church at any time.

It follows that tithe is not a tax imposed by the State on the property of the people for the purposes of revenue or for any other purpose, and it is asserted that when the conditions under which tithe was created and has since subsisted are looked at, there never was any hardship attending its collection, save such as is inseperable from the necessity of paying ones debts, or taking the consequences in case of default. Tithe has a capitalised value, which, for the sake of argument may be taken at twenty years purchase. A yearly tithe rent charge of £50 would on this basis be worth £1,000, and this sum of £1,000 would be taken into account on any transfer of the land out of which it issues. If the land is worth £5,000 without tithe, its selling value with tithe would be £4,000,

and for the purchaser to turn round and refuse to pay the rent charge, after receiving a heavy abatement on the understanding that he would pay it, cannot be right. Is he to receive the £1,000 as a free gift, for that is what such conduct implies? He might so hoodwink the "State," to which it is now convenient to appeal, but the chance of his being able to do so is exceedingly remote.

The tenant farmer is in precisely the same position, though he has not the same interests at stake. He rents a farm of 100 acres at £3 per acre, plus tithe. Is he so fatuous as to suppose that if there were no tithe he would get it for £3? Naturally he would have to pay more. *Ex contrario*, if he rents 100 acres at £3 to include tithe, though it may seem at first sight that if the tithe were altogether abolished (a most unlikely proceeding) he would only have to pay perhaps £2 10s., it is certain and admitted by all shades of politicians, and for once they agree, that the landlord would reap the advantage sooner or later and not the tenant. The value of land, tithe free, is greater than it is when saddled with tithe, and rents would begin to rise all over the country. For this reason Mr. Labouchere and other Members of Parliament, who cannot at any rate be charged with favouring tithe owners, whether clerical or lay, recommend that the tithe should neither be abolished nor redeemed, but constituted and for ever remain a first charge on the land. One of the most telling arguments of the Liberationists is that it would

be a clear gain to the agricultural population to have their land tithe-free. It is replied that if precedent counts for anything this would never come to pass even if the Church were disendowed, but that assuming by some fortunate chance it should so happen, the advantage would be lost to the agriculturist. His £9 to the landlord and £1 to the tithe owner, would simply be replaced by a single payment of £10 to the former.

The £4,000,000 which, in round figures is annually devoted to the maintenance of the Church from the tithe-fund, represents the interest of an enormous capital sum which has gradually swollen till it attained its present proportions, by the voluntary offerings of pious people, extending over a period of 1300 years. Perhaps these gifts might have been bestowed elsewhere with better result, perhaps no man has a right to diminish the family property and ought to be punished for not adding to it, but all this and much more is quite beside the question so long as it is admitted that by the Law of England a man has, and always has had a right to the free disposition of his own property.

The opponents of the tithe-system, some of whom no doubt are actuated by conscientious motives, also base their objections on all sorts of extraneous grounds, not one of which has the least bearing on the subject of property and its rights. They say that the clergy are the supporters of Toryism, and being tithe-fed in part at least, swell with fatness at the expense

of poor Liberals; that they maintain a religious autocracy, assuming airs of superiority and even believing themselves to possess almost miraculous spiritual powers denied to the common herd; that instead of promoting Christian work the tithe-fed clergy hinder it by endeavouring to hold up to contempt the Wesleyans, Primitive Methodists, Independents, Baptists and other Nonconformist bodies; that unsuitable men are pitchforked into the Church, three quarter squires and one quarter clergymen being common all the country over; that tithes paralyse the liberality of Church-goers. "How different the rate of giving at the Chapel and at the Church," says one pamphleteer with a fine disregard of facts. The same authority says that tithes are used "to suppress manliness and self-reliance among the village poor," from which it follows that starvation is a great incentive to cheerfulness of disposition, and that charity, however distributed, is a positive evil. None of these assertions, even if true, touch the main question, which is altogether unconnected with the status of political parties, and the moral effect of promiscuous charity.

A positive law has materially affected the old provisions for the relief of the poor, but it has not superseded them, and there are yet, we venture to state, many clergymen who have the moral and religious welfare of their parishioners at heart, and who spend all they receive in tithe, and more, in acts of kindness and charity by no means restricted

to a hard and fast line of denominationalism. Thousands of the clergy appropriate their tithe with some regard to the doctrines of the religion they preach, and comparatively few have much accumulation of income to call their own when the account comes to be balanced at the end of the year. We have heard it said—often—that the Parliamentary Overseers of the Poor look after themselves first and their unfortunate flock afterwards, that a very small proportion of the public money, ever reaches the poverty stricken, that in short the taxes we are forced to pay are mostly squandered by officials whose attitude towards the poor is too often marked by extreme insolence, and sometimes even by violence. The Poor-law as administered in this country stands so greatly in need of revision, that no one who knew anything about its working could conscientiously recommend the transfer of a single shilling of tithe-money to the Commissioners. An indictment might be formulated against the entire Poor-law system, in which every one of the charges preferred against the clergy on account of their acceptance and appropriation of tithe, could be abundantly proved against the overseers. Who more arrogant towards the poor than they? Is not theirs an autocracy of a baser sort? Do not they hinder Christian work, check liberality, impose a ban on manliness and self-reliance, and last of all, but not least, where goes the money which another set of officials spend their time in collecting?

To hand over any of the Church property to official care is clearly not the way to contribute to the good of the people. The divisions of Ireland are more embittered than ever, and the agricultural interest there is fast disappearing altogether. No one, who is well advised, will lend money on agricultural land in Ireland, and significantly enough, tithe must be paid according to a fixed scale made twenty-five years ago, when land was, comparatively speaking, in a prosperous condition.

In a large town, or even a thickly populated parish, there is not the same necessity for endowments whether of tithe or anything else, for there are plenty of persons able and willing to contribute to the maintenance of their Church or Chapel and to the relief of the poor. The following statement records sums raised only by Offertories in Church during the year 1893, and through such parochial organisations as would come directly under the immediate direction or cognizance of the clergy. It is obviously impossible that such a statement as this should embrace individual offerings privately dispensed or conveyed to central societies and institutions, so that for this reason, and others, the sum of £5,401,982 is not by any means completely comprehensive of the contributions of churchmen for general church work during the specified year. This table has been compiled with careful accuracy from a form of parochial return issued under the direction of the Archbishops and Bishops, to which 95 per cent. of

the clergy replied. The facts in fuller detail are given in the "Official Year-book of the Church of England" for 1894, published by the "Society for Promoting Christian Knowledge."

Diocese	Amount.
Canterbury	£233,567
York	232,841
London	596,134
Durham	83,042
Winchester	281,556
Bangor	36,332
Bath and Wells	114.717
Carlisle	79,890
Chester	154,760
Chichester	194.118
Ely	112,418
Exeter	137,232
Gloucester and Bristol	197,228
Hereford	66,720
Lichfield	230,142
Lincoln	75,145
Llandaff	83,962
Liverpool	125,230
Manchester	358,299
Newcastle	92,130
Norwich	124,829
Oxford	202,732
Peterborough	128,964
Ripon	168,883
Rochester	370,089
St. Albans	192,938
St. Asaph	62,051
St. Davids	65,641
Salisbury	110,587
Sodor and Man	8,338
Southwell	159,099
Truro	59,442
Wakefield	93,825
Worcester	169,084
Total	£5,401,965

This large sum it must be remembered is exclusive of donations made by Churchmen to Nonconformist places of worship. It is a great mistake to suppose

that Churchmen dislike Dissenters on principle, and never subscribe to their funds. In a book called "The Dissenting World," by the late Rev. Brewin Grant, it is stated at page 235, "I received great assistance from persons of all denominations; I should say, that out of some £3,500 raised during my Pastorate for the building fund, at least £1,000 was contributed by Churchmen." Mr. Grant was, at that time, a Congregationalist Minister, and what he says will only seem incredible to those who picture a chronic state of ill-feeling as existing between the members of one Christian assembly and every other.

Large donations are only possible in crowded districts; what is to become of the remote villages and sparsely populated parishes, if the property of the Church is diverted from its customary channel? With the best intention in the world, no Minister whatever his profession of faith, or to whatever particular body he might belong, could carry on the services of his Church for twelve months, in districts such as these, unless his office were endowed, or he possessed an income of his own. Failing one of these alternatives, the institution of Divine worship in that neighbourhood must cease, and with it, in time, the teaching of many years. In hundreds of impoverished country districts, the Church of England is supported, under such circumstances that if the endowments were confiscated, the services must be discontinued. It would not be a question of jealousy between religious bodies, for there would be

no possibility of any of them making headway against poverty and neglect. In most cases the doom of the local church would be sealed; a struggle might be maintained for a time, but at last the only door standing open to the parishioners, rich or poor, would be that of the village ale-house over the way. At present there is not a parish in England or Wales, in which, once a week at least, the services of the Church are not performed, and very few indeed in which the claims of the poor are disregarded. It is for the good of the State that this should continue, and even if it does, as so many advocates for disendowment loudly assert, without however a particle of truth, "bolster up the establishment," it might do worse by building more prisons, enlarging workhouses, levying more taxes and encouraging officialdom.

Aristotle, though a heathen philosopher, declared the institution of Divine worship and of appointed officers to conduct it, to be the first political concern and necessary to the very existence of a State:—that religion is necessary to secure the moral and political ends of society, the history of all nations loudly proclaims. (*See* Polit. viii. cap. 8.)

CHAPTER V.

LANDED PROPERTY. LEGAL COMPLICATIONS AND RESPONSIBILITIES. ORIGIN OF PROPERTY IN LAND. NATIONALISATION OF THE LAND. SPENCER'S AND GEORGE'S THEORIES. "UNEARNED INCREMENT." "BETTERMENT."

THOUGH tithe, regarded in the light of a species of property, is an asset of great importance, it is, when compared with the ownership existing in land, absolutely dwarfed into insignificance. The area of England is computed at 50,923 square miles, and not an acre but what is a matter of absorbing interest to somebody or the subject of conflicting claims. The old legal maxim *cujus est solum ejus est usque ad cælum et ad inferos*, vests the mines under the ground and the houses or timber upon it, in the owner of the surface of the soil. A lake is a "plot of land covered with water"; a conveyance of land, *quâ* land, carries with it water, minerals (as a rule) and houses, even though they are not mentioned in the deed. The legal owner in possession of landed property, has certain rights of fishing, shooting, building, mining or cultivation, and these rights are exclusive, that is to say they prevail against everyone else who cannot show a legal justification for his intrusion. Of these 50,923 square miles, probably not less than 45,000 are mortgaged, a vast proportion "up to the hilt." Leases and settlements and all kinds of pecuniary

interests are bound up with a representative holding, and there are frequently common law rights such for example as pasturage, subsisting over it as well. There are proprietary rights to running water which must not be diverted or fouled to the detriment of the riparian owners lower down the stream, nor dammed to the prejudice of those above. The entire system of land tenure as it has existed for more than 800 years in this country is feudal, often involving nice distinctions of ownership, and complicated questions of user, rental, forfeiture or possession. Add to all these and many other general details, an exceedingly artificial system of trustee-ship and we have some idea of the responsibilities that may in certain cases attach to the possession of an acre of freehold or leasehold land.

The theory of the reformers is that no man has a right to the exclusive possession of landed property. They deny his authority to shut out his neighbours from the enjoyment of what is naturally the heritage of all, or to appropriate to himself increased benefits arising perhaps from the proximity of some rapidly growing town, which, very possibly he has done little or nothing to establish or improve. Some landlords also will not or cannot cultivate their property, and this too is regarded as an evil, to say nothing of the occasional depopulation of whole districts, especially in Scotland, to make way for deer and foxes.

> "Our small farms turned to deserts dumb,
> Where smoke no homes, no people come
> Save English hunters—that's the sum
> Of what we have reaped for Culloden."

How to get rid of the "English Hunter" is a problem that has puzzled a good many people since William I. took possession of the soil at Pevensey, and introduced a system that was the death blow to any scheme for the nationalisation of the land.

Some assert that the land in this country was actually national property at one time, and that the Conqueror and his associates were nothing better than an army of thieves, who confiscated and plundered the common property of Saxon village communities. This is only partly true, for the Saxon land laws were in some respects as stringent as our own. They recognised private ownership as we do and as every civilised people has always done, for when a nation attains a certain height of civilisation it never fails to make laws to regulate the use and possession of land and to quieten conflicting claims.

The subject of Common Lands and village communities is not, however, without its difficulties, though we believe it a mistake to suppose that in this country, land other than common land, has ever been national property. Mr. Shaw Lefevre, in his "English Commons and Forests," arrived at the following conclusion, and his words are quoted because they seem to suggest the very utmost that can be advanced by the advocates of land restoration. "There has been much discussion of late years as to the origin of English Commons. Till lately, the views of the feudal lawyers of mediæval times were

generally accepted, equally by antiquarians and historians, as by the Courts of Law. It was held that these open and unenclosed tracts were the uncultivated parts of areas of land, or manors, granted originally by the Sovereign to individual owners, and that the rights of common over such wastes, enjoyed by the freehold and copyhold tenants of such manors, had arisen from grants by their superior lords, or by custom, later recognised by law, in derogation of the lord's rights. Owing, however, to the investigations of Professor Nasse, Von Maurer, Sir Henry Maine, and others, another theory is now more generally accepted—namely, that the common rights now existing are in most cases survivals of a system of collective ownership of land by the inhabitants of their several districts, the prevalence of which in the early stages of communities has been traced over the greater part of Europe. Under this system there was originally no individual ownership of land. It was owned in common by village communities." Some of the land was certainly owned in common by village communities, but that the whole of it ever was is more than Mr. Shaw Lefevre succeeds in proving, and indeed the probability is precisely the other way.

The Romans were very much addicted to agrarian agitations and the arguments advanced at the time were strangely like those prevailing now. There were writers on both sides, as there are at the present day, and the thunderbolts of Jupiter were part

of the stock in trade of every one of them. Each side invoked the Gods to witness to the tyranny or malice of the other. The landowners who had everything to lose pressed length of possession, purchase, or any other defence that appeared substantial; those who had nothing, harangued the crowds of slaves, freed men and poor citizens, who assembled in the evenings at the Campus Martius, after the soldiers had returned to their barracks from drill. The great argument of the agitators, was then, as now, that at one time the soil was common property, but that all, anywhere near Rome, had been filched from the people in bye-gone days. They claimed therefore that the common lands nominally belonging to the State, should be cut up into allotments and bestowed in perpetuity on those who had been deprived of their lawful heritage nearer at home. At no time did the Roman agitators propose to dispossess owners of property except in these common lands; they only urged their claims to a share of what they said was State property, which through conquest or confiscation was of enormous extent. They wanted compensation in kind.

This ancient matter of history would be of little interest to us now but for the fact that the Roman writers, in their search for material to support their several contentions were led to study the origin of the ownership in landed property, and they agreed, as everyone who has studied the question will do, that all property must necessarily at one time have

been held in common. When Adam delved and Eve span, it is only reasonable to suppose that fences were unknown. The Roman authors acquired most of their information from the half savage tribes dwelling across the Alps, and the conclusion they arrived at was that in a primitive state of society hunting and pasturage are the only uses to which land is put, that after a while it occurs to some one to till it, that this action is imitated, and that sooner or later settlements spring up. It then becomes absolutely necessary to formulate laws regulating the use and possession of land, for it would not only be wrong but foolish, to eject a husbandman from a plot which he had worked till it became prolific. Among the Germans, or rather among some Teutonic tribes, each head of a family had a certain allotment which he was, after a certain length of time, compelled to exchange for another, the idea being that as the land belonged to every one, it was only fair that everyone should be served alike. Some allotments might be better and more easily cultivated than others, and so by a periodical exchange they realised the idea of joint-proprietorship which exists in some parts of Europe—to some extent in Servia and Russia for example—to this day.

It is obvious that as population increased, this system good though it might be in some respects, could not continue. One man might spend more time and incur greater expense on his allotment than another. Some lazy and selfish person, with

his eye on an approaching exchange would neglect his duty, and moreover the necessity of providing more and more food for a rapidly increasing resident population would entail a high cultivation of the land which could not be done but at great expense. A man who spent much money on his plot and who took a pride in his work under conditions which involved a speedy exchange, must have been a *rara avis* one would think, nor would he be pleased or encouraged to see his lazy rival reaping where he had not sown. And so it would fall out naturally enough, and quite as a matter of course, that retention would first be prolonged, and finally come to be looked upon as a right. Then the community would step in and draw up a series of rules regulating such possession; in other words it would acquire a recognised code and written law which all would be equally bound to obey.

This was the Roman conclusion, arrived at after years of patient investigation among neighbouring tribes in various stages of civilisation, and we believe this conclusion to be right, for the very same progression from absolute freedom to partial or entire restriction has been observed by ourselves and has become a matter of history. What one or even a few tribes might do, though may it be suggestive, is not conclusive, but when we find that the same experience is gone through by many tribes in different parts of the world and in different ages, then we are justified in regarding the process as natural.

The Mosaic laws recognised the right of each tribe to the possession of a certain large allotment, and each member had an absolute right to his own separate portion, subject to the rule that alienation should only be valid for forty-nine years. Every fiftieth year was called the Jubilee, and then original ownership was resumed, just as if there had been neither sale, nor lease, nor mortgage in the meantime. This is but another form of the primitive custom of occupancy in rotation, prolonged for a reasonable length of time to induce the temporary owner to utilise his land to the best advantage. The Jews were an agricultural nation, and the idea was that as the land belonged to all equally, the best way of nationalising the land was to divide it, and to assign to each person an equal share, which he could neither alienate nor incumber for more than forty-nine years at the most. One defect in this system must have been that as the Jubilee approached, the price of all kinds of grain would rise in the market, while the whole commercial fabric would be undermined. In fact the few years before and after the Jubilee, must have been periods of intense uncertainty.

In ancient Rome the soil which was included in the territories of the early State, the *ager Romanus* as it was called, was distinguished from all other land, being held by a special tenure called the *Jus Quiritium*. This was all private property, and it is worthy of note, that in later times a greater portion

of the soil of Italy was placed on the same footing, the *solum provinciale*, the remaining land in the wide Roman Empire being, in theory at least, the property of the State and not the subject of private ownership. But in practice, all landed property worth having, no matter where situate, was in the hands of private persons for a longer or shorter length of time, and the ownership of the State was never unfettered. Had it been, the demands of the agitators could easily have been satisfied without injury to anyone, but it was not, for in order to comply with them it would have been necessary to interfere with the ownership, legal or otherwise, or at any rate with the occupancy of an enormous number of people, who, it may well be imagined would not peaceably abandon what they had perhaps held for years without question. In Rome the conflict was between persons in possession supported by the State, and persons out of possession who wanted what they thought they were legitimately entitled to, namely, a share. The agitation was in favour of private ownership, in which everyone should have his fair proportion, and in order to attain this end it was suggested that the State should seize the *Solum provinciale*, and parcel it out among all citizens of Rome. The State, trammelled on every hand by all sorts of conflicting interests, did not see its way to do this, and hence the disturbances that were constantly arising.

The Saxons, who are more closely bound up with

ourselves, in that some of their laws relating to landed property prevail, with modifications, to this day as part of the Common Law, had the village system. Lands under tillage were in private hands, sometimes in permanency, or occasionally subject to periodical exchanges. Lands which were not fit for tillage were the property of the community, and every one had a right to use them for pasturage or otherwise as they had a mind, so long as their method of user did not interfere with the equal rights of others. The very same development observed by Roman writers as having taken place in the holding of the German lands, may be seen in the tenures of the Saxons. At first Communism, then the gradual assertion of private rights for a limited space of time, then their acknowledgment in perpetuity. It is probably thirteen hundred years since landed property was held in common in this Island, at least to any material extent. The very nature of the case demands that he, who at his own expense has sown, should also be allowed to reap. The prime difference between a five-pound note and an acre of land, is that the former, though by its means we may acquire another like it, can never be other than what it is, while the latter may be improved by labour, and when improved is obviously something better and therefore different from what it was before. It is just this obvious truth that, sooner or later, is certain to force itself on the minds of any people who are not purely nomadic. Directly they begin to congregate,

increasing supplies of food become a necessity, and then it is certain that rights will be claimed in the soil by those who improve it.

When William I. had established his position on the throne, one of his first acts was to reform the land system according to his notions of what was right and proper. The lands of such of the Saxons as had fought against him were confiscated, while even the few properties that remained untouched, were made subject to the peculiar tenure imported from the continent, called the Feudal Tenure. Almost every trace of village communism was swept away, and to this day every acre of freehold land is held of the King, or in some few instances of the Lord of a Manor whose title dates at the latest from the eighteenth year of the Reign of Edward I. This will be explained in the next Chapter, and in the meantime it is only necessary to say that the State, considered as a ruling or governing power composed of the people, has never held landed property since very early Saxon times. The lands of the Normans were held of the King personally, that being the very life and soul of the Feudal system.

Obviously however, times have changed since the Conqueror dispossessed the Saxons to satisfy the rapacity of his followers, and various schemes for what is called the "Nationalisation of the Land," have been suggested. They have their origin, no doubt, in the increase of population, and the fact that some landowners own immense tracts of territory from which

they rigorously exclude everyone but themselves and their servants. The American millionaire, who, a few years ago held, and may yet hold, almost an entire county in Scotland for sporting purposes, did more by his example to disgust the people with a system that permits the retention of such extensive tracts for mere selfish motives, than the conduct of a hundred landlords, however powerful, who are natives of the soil. Prior to 1870, no foreigner, even though the subject of a friendly State, could hold landed property here, unless it were merely a lease for residence or business for a term not exceeding twenty-one years. The conveyance to him of a greater estate was a cause of forfeiture to the Crown which, after proof of the facts, might have seized the lands. Why this salutary rule was ever departed from it is impossible to say, unless on the assumption that there is more land in the country than is necessary for the support or convenience of the people.

Mr. Herbert Spencer's scheme of nationalisation as disclosed in his "Social Statics," is, in effect, that the State shall acquire all landed property as preliminary to letting it out for terms of years to the highest bidder. Under this *regime* the noisiest agitators would get nothing, or very little, while rich men would, as heretofore, continue to hold the largest tracts. Besides, the present owners would have to be compensated, and the value of freehold property is, area for area, so much greater than that of short leaseholds, that they would, in many cases, receive a sum,

the very interest of which would enable them to hold as much or more land than they held before. This scheme could not possibly succeed unless the element of compensation were thrown over, and Mr. Spencer does not advocate confiscation pure and simple.

Mr. Henry George, the author of "Progress and Poverty," would not dispossess the present owners. He would merely tax the land to the value that has been given to it by the community, as distinguished from the value that has been bestowed on it by the capital and labour of successive owners. The effect of this would be to make every owner pay rent for the land he claimed without taking the purchase money into account. This is so obviously unfair, and moreover so much land would be immediately thrown out of cultivation in order to reduce the rental value, that it is difficult to see how the scheme could work in practice.

There does not appear to be the slightest approach towards agreement among the reformers of our land system, nor much chance of reformation except on a basis of compensation so long as the present factors which compose society hold together. One violent section of the community would seize the land by force, eject all the owners and occupiers without compensation and then proceed to divide the whole area into small plots each sufficient to maintain a single family and no more. The larger the family the more land. No family, no land. This is unfair upon an immense army of men who happen to have no one to maintain

but themselves, and moreover, continual re-adjustments would be necessary. A man who had two children at the time of the division, might have six or more ten years afterwards, and on the other hand a man with six, might find himself alone. The man with ten children and ten acres might be so poor that his property would be useless to him, it might be a dozen miles or more from a market town, and if so he could not sell his produce. The agitators who favour a proposition like this, would, if past experience is any guide to future conduct, take particular care that their plots were in the heart of the city, where land is so costly that it cannot be bought for a surface covering of sovereigns.

There can be no question, and it is not denied that the land system as at present established might be vastly improved. The tenures under which it is held, are, many of them, most unsuitable to the wants of the age, and reform in this direction would be to the advantage of everybody, land-owners included. How to effect this without injustice is the problem that reformers have to face, and so far they have turned their backs upon it out of sheer inability to cope with the conflicting demands of their own followers. Thus, the Fabian Society in one of their tracts admit that "although the principle of the collective ownership of the soil is now so widely accepted, comparatively little attention is paid to the practical methods of giving effect to that principle. The *Land Nationalization Society* advocates the State

purchase of the landlords' rights, and the *English Land Restoration League*, insists on the Taxation of Land Values. For want of a more detailed and practical programme, Parliament is even permitted to sanction the alienation of public glebe lands and tithes; many even of the Progressive Members of the London County Council fail to understand why they should not vote the sale of its Metropolitan land; and the Liberal leaders are forgiven their persistent hankering after Leasehold Enfranchisement in England, Peasant Proprietorship in Ireland, and the other obsolete ideals of the 'Free Land' school." Such is the wail of the Fabian Society.

There are two theories which, without aiming at the absolute nationalisation of landed property, would impose incumbrances upon its possession. One is known as the "unearned increment" theory, by which land that rises in value from extraneous circumstances would be heavily taxed. This suggestion is defective because the improvement is often due to the sinking of capital by successive owners. Such property would in practice generally be found near large villages, but as their growth is the direct outcome of private enterprise, the effect of any such rule would be to annul the operation of private enterprise altogether. A landowner who knew that he would be specially taxed directly his property could be assessed at a certain value, would hardly be likely to promote his own loss, and though it may be true that an increase in the value of his property

would in the long run be a distinct gain to him and not a loss, still men are so constituted that they would not see this without the clearest practical proof. We may be sure also that the tax would be levied in advance and that provision would be made for appeals against the assessment and we know the result of this with a powerful influence thrown into the scale. And besides there is no justice in applying the "unearned increment" theory to landlords alone. A shopkeeper may suddenly, and through no particular foresight of his own, find himself the possessor of a big business on the very spot where twelve months before he could hardly pay his way. A new line of tramways has been known to affect such a reformation in scores of instances before now, and on the other hand a new street may well nigh ruin what becomes a roundabout though hitherto prosperous thoroughfare.

In some parts of America they impose a graduated tax on the increase of value due to municipal improvements, and this idea under the name of "betterment" has lately taken root among us. It is extremely probable that some such tax may be imposed here, and if so, rents will necessarily rise throughout the district in which it is levied. This has been the case in America, where it is found that the persons who really pay for "betterment," are they who can least afford to do so. The landlords amongst others, are heavily taxed in the first instance, and to recoup themselves they raise their rents, and the shopkeepers raise their prices, and the manufacturers raise theirs,

and the customer or anyone who has a dollar to spend gets the least possible return for it. No such colossal fortunes are made anywhere as in America, and there as elsewhere it is the poor that heap them up.

Taxation must necessarily be imposed on those who can afford to pay promptly, but they in their turn tax others a little less fortunate than themselves and so on till the very poorest grades of society are reached. The State is a professional tax gatherer, and when we, victims and apt scholars in the school have been taught our lesson thoroughly, we go out and tax somebody else under the protection of our teachers who say nothing so long as we fulfil our obligations to them.

For this reason alone, it is at least doubtful whether land reform can be secured by means of an increased taxation upon acres or any other species of property, nor, for reasons to be afterwards explained is it just that anyone should be restricted in the enjoyment of his own property, whether by the covert imposition of a tax or by open interference, so long as he exercises his rights over it in a reasonable manner. If he does not, then it is fit and strictly just, that pressure should be brought to bear in order to compel him to do so.

CHAPTER VI.

COMMON LANDS AND ENCROACHMENTS. THE NORMAN INVASION. THE FEUDAL SYSTEM. SUB-INFEUDATION. TURBULENT BARONS. STATEMENTS OF LAND CONFISCATORS. LAND NEVER NATIONAL PROPERTY. "THE ENGLISH LAND RESTORATION LEAGUE."

THERE can be no question that at the time of the Norman invasion, and indeed for hundreds of years before, the Saxons recognised private ownership in landed property. There were common or waste lands then as there are now, and no doubt a proportion of the soil in immediate proximity to most villages was the joint property of the inhabitants. But it is equally certain that the better the quality of the land, the less would remain unappropriated, for these common lands were always the worst, frequently fit for no other purpose than to supply sand, gravel or peat. The truth probably is that when land was brought under cultivation, the cultivator began to think that he had certain vested rights in it, and even in those early days, the commons doubtless grew gradually less in extent. At the present day some common lands remain, but there is no doubt that these are much less in superficial area than they were a century ago. In 1872 Lord Morley, while moving the second reading of the Inclosure Acts Amendment Bill, said that between the years 1710 and 1800, 7,000,000

acres of common land had been enclosed. Between 1845 and 1872 a further 540,358 acres had been fenced in, and out of this total only 1,600 acres had been reserved for recreation ground, and 2,113 acres for allotments. It is only fair to mention this, for this book is not written in defence of robbery. On the contrary it avowedly supports legitimate rights and vested interests, no matter who the claimant may be. If, therefore, a case of deliberate encroachment can be proved against any owner of land, it is submitted that he should be severely punished, in addition to being compelled to restore what he has surreptitiously taken, though action against him ought in common justice to be commenced within a reasonable length of time after the encroachment is discovered, and should, in every case, be in the form of a direct indictment at the suit of the Attorney-General on behalf of the people, so that mere questions of influence or money would be altogether extraneous to the matter complained of. It is neither just nor reasonable to wait for twelve, fifteen, twenty or fifty years, and then to agitate for restitution; it is not just because the appropriated land may by that time have become subject to claims on the part of perfectly innocent persons having no notice of the fraud—mortgagees for example—and it is not reasonable, because the evidence to support or combat the allegation is certain to have weakened or to have altogether vanished with age. It may be thought that the title deeds of the property would show by

the usual plan, the precise acreage of the estate, but a large estate is nearly always composed of an aggregate of smaller properties held under different titles with an independent set of deeds for each, and the boundaries are not always or indeed often ascertained with strict accuracy. It is the ordinary practice to have a fresh survey made at intervals or at any rate on a conveyance, if any length of time has elapsed since the previous survey, and it is in this way that encroachments become legitimatized. Sometimes such encroachments are unsuspected even by the landowner himself, for the boundaries of landed property are very seldom represented by a straight and well defined line. Promptitude is therefore a *sine quâ non* in all cases where intrusion is suspected, whether innocent or by design, is immaterial.

The common lands whether consisting of large open tracts or the more restricted village greens, are not strictly survivals from Saxon days, but rather the outcome of the Norman invasion. On the other hand no claim to private property in land can reach further back than to the same period; in fact our whole Real Property system as it exists at present, was, with modifications, introduced by William the Conqueror.

After the Battle of Hastings, which took place on the 14th of October, 1066, William directed his attention to the pacification of the country, and having been crowned at Westminster Abbey on the

following Christmas Day, proceeded to overhaul the laws of the conquered Saxons. Many of these were formally re-enacted as we have seen, but the land laws were entirely swept away and a new Tenure introduced from Normandy. This was the Feudal Tenure, common at one time throughout Europe. Its main feature was that the King was the Lord Paramount and that all land was held of him. It is a matter of controversy whether this Tenure was introduced into England by a stroke of the law, for some land was left in the possession of its Saxon owners, and it is possible that at first this would remain unaffected. But it is quite certain that the confiscated lands were granted by William to his Norman followers to be held of himself, and that later on all the landed property in the country became subject to the same law. To this day the theory is that every plot of land in England is held mediately or immediately of the King for the time being as Lord Paramount, and this is the reason why, if the owner of any freehold dies without having made a will and without leaving any heir, his property escheats to the Crown.

The Feudal system was a military one, lands being given by the King to the donee in consideration of certain services to be performed by the latter, as for instance, to provide so many armed men in time of war, to present himself armed and equipped at the King's call, or to perform certain other honourable services in his own proper person. The tenure of

Knight's Service was abolished in the time of Charles II., having already long been obsolete, but some of the incidents affecting other tenures yet remain.

The King granted out the lands for different periods of time, for the word "tenure" merely defines the method of holding, and has no reference to length of possession. The least term any of William's followers would have been disposed to accept was an estate for life, and to this day such an estate is the smallest estate of freehold it is possible to create. Then there were estates in fee simple, which descended from father to son *ad infinitum*, and out of these grew entails, by virtue of which the son has a right of succession, notwithstanding anything his father may do with the object of depriving him of it. The lands of the Church were, and are, held in Frankalmoign, a species of tenure exempt from all kinds of service, and there are one or two other tenures of less importance, which it is not necessary to mention.

If an estate for life were granted to a man, though he might enjoy it as long as he lived provided he fulfilled the conditions attached to its possession, it reverted to the grantor simultaneously with his death. In like manner an estate in fee simple would revert directly the heirs failed, and at first, it must be remembered, land was absolutely inalienable, though it might be underlet. This practice of underletting became under the name of *Sub-infeudation* at last so common that it threatened to undermine

the whole system and had to be stopped. In practice it worked out this way. The owner of an estate, say in fee simple—the largest estate of freehold—established a manor. He would build a mansion house for himself, and grant out estates for life to his principal retainers, who thus became free-holders. Other parts of the property he would let out to vassals or serfs, to be held at his own will and no longer, and the waste lands were made common property for the benefit of the Lord himself, his free-holders and dependents. This is the origin of common lands as we see them now, and copyhold lands are those which were in these ancient times bestowed on inferior retainers to be held absolutely at the will and discretion of the Lord of the Manor, who in his turn held the whole manor of the King as Lord Paramount. What it came to was that the Lord of the Manor, although obliged to perform his services under pain of forfeiture, recouped himself in kind from his own tenants. If obliged to furnish twenty armed men he would exact fifty, having thus thirty men to the good, a practice which invested a combination of these Lords of the Manor, or Barons, with an immense power frequently little inferior to that of the King himself. John was forced to sign Magna Charta under pressure of such a combination. Each individual Baron might scrupulously perform his services to the King and yet have a superior force behind. This was manifest all the days of Stephen, who was perpetually at war with his rebellious subjects.

A good example of what the early Norman Kings had to contend against is afforded by the career of Geoffrey de Mandeville, the Constable of the Tower of London, and one of Stephen's unruly Barons. In June 1141, Matilda, who for the time being had successfully defied the King, held a kind of Court in the Tower, under the doubtful protection of Geoffrey. The citizens of London becoming disgusted with her arrogance and pride, rose in a body on the eve of the feast of St. John the Baptist, and the alarm bells commenced to ring out from every steeple of the city. The old chronicles relate that Matilda rose from supper in alarm and determined to seek safety in flight. The Tower, though strong, was not strong enough to resist discontent from within as well as armed opposition from without, so she fled to Brentford; escaped in the gloom, most probably through the dense thickets of the Strand. Geoffrey de Mandeville, missing his charge, determined to overtake her if possible and bring her back, and with this object scoured the country with a strong body of Norman horse, but failing to meet with her he pounced on the Bishop of London, in his palace at Fulham, and carried him off to the Tower for ransom. This was one of his acts, but not the last nor greatest. To satisfy the demands of this turbulent warrior, King Stephen, on his accession to the Crown, had thought fit to take him into his confidence. He first created him Earl of Essex, and confirmed his possession of the 118 Lordships he had inherited from his father,

an equally grasping soldier who had come over with the Conqueror, and received his reward out of the forfeited lands of the Saxons. He also made him Constable of the Tower, and seems to have done his best to attach him to his person. In this he failed egregiously, for Geoffrey speedily demanded more, and when this was refused called his retainers together, which the system of *Sub-infeudation* enabled him to do, and openly rebelled against his master. He commenced by sacking Cambridge and laying waste all the surrounding country. Nay, more! he had the assurance to storm and destroy several of the Royal Castles. The ravages committed by this Baron are described by Henry of Huntingdon as frightful. One of his practices was to send spies from door to door so that they might discover where rich men lived. He would then kidnap them and hold them to ransom, or kill them, if the necessary funds were not speedily forthcoming. During his lease of power the fortress of the Tower was a gigantic receptacle for stolen goods, and its underground dungeons the abode of captives innumerable. Geoffrey was at last excommunicated for sacking the Monastery of St. Benedict at Ramsey. He surprised the monks in their beds in the gray of the morning, turned them all out into the open air as they stood, stole the vessels of the altar and all the vestments, and finally loopholed the Church and converted it into a fort. The warrant of Excommunication he tore up, and to show his contempt for the priests, swooped down on

the Royal Castle at Burwell, where some of them had taken refuge. Here he was shot with an arrow, and although, says William of Newburgh, "the wound was first treated with disdain, it destroyed him after a few days, so that this most ferocious man, never having been absolved from the Ecclesiastical curse, went to hell." William of Newburgh, indeed, sums up the character of Geoffrey in burning and uncompromising words. "He dared to turn the Sanctuary of the Lord into an abode of the devil" he says. "He infested all the neighbouring provinces with frequent incursions, and at length, emboldened by constant success, he alarmed and harassed King Stephen himself by his daring attacks. He thus indeed raged madly, and it seemed as if the Lord slept and cared no longer for human affairs, or rather his own, that is to say, Ecclesiastical affairs, so that the pious labourers in Christ's vineyard exclaimed, 'Arise O! God, maintain thine own cause' * * * * * It was discovered a short time before the destruction of this impious man, as we have learned from the true relation of many witnesses, that the walls of the Church at Ramsey sweated pure blood—a terrible manifestation, as it afterwards appeared, of the enormity of the crime and of the speedy judgment of God upon sinners."

Geoffrey de Mandeville was, doubtless, an exceptionally turbulent Baron, but the system which afforded him the opportunity of acting as he did must have encouraged many imitators, for in the

eighteenth year of the reign of Edward I., an Act known as *Quia Emptores* put a stop to the practice of *sub-infeudation* for ever. It enacted for the first time that every freeman might sell at his own pleasure his lands and tenements, but the purchaser was to hold the same of the chief lord of the fee (the King) by the same services and customs as the vendor had held them before. Since this Statute, which is still in force, it has been impossible for any landowner to sell his property or to grant any freehold estate in it except under the legal condition that the purchaser shall hold it directly of the Crown and not of himself. Leases of terms of years are not affected by the act, and the title of "landlord" is therefore properly applied to the creator of such a tenancy but to the grantor of no other estate, unless created before 1290 the date of the statute in question. There is plenty of land in the kingdom held on ancient titles which date back considerably before even that ancient date. All copyhold and freehold manors for instance must necessarily be older, and in them the practice of *sub-infeudation* yet lingers. A copyhold tenant holds of the Lord of the Manor and not of the Crown, he has to render to his lord certain services, and if he dies without an heir, and without having made any testament, his property (now only technically held *at will*) escheats to the Lord, who thus gets it for nothing, and not to the Crown as it would do in ordinary cases.

It has been repeatedly said, often by those who

ought to know better that the land now in the possession of private persons, was at one time filched from the people. There is, however, no trace of such sequestration in historical times, except it be by encroachment on common lands by neighbouring proprietors. William I. seized nearly all the landed property owned by his Saxon enemies and gave it to his followers, but this was merely enriching one man at the expense of another, and moreover he took the property himself in the first place, before granting it out again, in accordance with the primary rule of the Feudal Law that all land is held mediately or immediately of the King himself.

It must be remembered that "the people," in the sense in which that term is now understood, had no existence until a comparatively late period of English history. There was no middle class in this country during the rule of the Norman Kings, nor indeed till long afterwards. The bulk of the people were serfs, or at any rate, dependents of one kind or another upon local landowners, who, in consideration of their assistance in tilling their fields, and doing other work about the estate afforded them their protection; in fact maintained both them and their families, granting them certain plots on which to build their homesteads. The freeholders were independent so long as they performed their services and paid their rent (for freeholders, even to this day, as well as leasehold tenants often pay rent), and their position would perhaps very nearly correspond with that

of an ordinary county family of our own time; superior in point of social position to the toilers and workers of the fields, but inferior, in those days at any rate, to the superior landlord, who was frequently some powerful Earl, and master perhaps of fifty manors.

In our day, the middle class, by which is generally meant the mass of the people below the aristocracy but superior in position to the labouring class, are probably in possession of three-fourths of the property real and personal of the country, though they are not the most numerous, and it is against them that agrarian agitations are most frequently directed. The numerical strength of the country is made of no avail, through the rapacity of a comparative few—that is the position invariably taken up and applied, not merely to the possession of landed property, but to the conduct of every trade and manufacture. It is one phase of the dispute between capital and labour, and it is not for us to say that it is mistaken. All that is contended for here is, that the land never was national property since the remote days of the Saxon village communities, and that even then private ownership was the rule and not the exception, and if this is so, there cannot be any rational excuse for depriving present occupiers of what they hold, so long as they perform the conditions under which they inherited or bought it.

Believers in the "national property" theory, labour under the trifling disadvantage of being unable

to mention one single year from 1066 until now, in which any portion of the land of this country has been owned by the people in contradistinction to individual proprietors. From this broad statement we except common lands, part of manors created before 1290, which certainly do belong and always have belonged to the local inhabitants, who, if warranted by custom, have a right of pasturage thereon, and less frequently of cutting turf, or wood, or digging gravel. But this right belongs only to local commoners and not to the people at large. Of course where gifts have been made to the people, as in the case of some Crown lands, they are as much proprietors as any single person could be, but these are instances of voluntary transfers by individuals in their private capacity and do not affect the question under discussion.

It seems to us that Societies like the "English Land Restoration League," should base their arguments on some other grounds than the evasion on the part of landowners of "obligations in the past," if they wish to make out a claim on the part of the people for compensation now. On the 20th March last a resolution was adopted by the Executive of that body which seems to show that they are alive to this point. The resolution ran as follows:— "That in view of impending changes in the incidents of taxation, as foreshadowed in the Newcastle programme, the Executive emphatically protests against the proposal of the Government to purchase from the Duke of Bedford for the sum of £200,000 a portion of

his London estate for the extension at some future time of the British Museum. In the opinion of this Executive no arrangement should be entered into with the Duke of Bedford until it has been ascertained what portion of the capital value of the said £200,000 is due to the public funds by reason of unjust evasion of obligations in the past, and an attempt has been made to recover the sums by an equitable scheme of taxation."

To be consistent, the "English Land Restoration League" should urge confiscation, which is what their stock proposals really come to, but from the wording of the above resolution it is evident that they did not think fit to do so in this instance. Why not? The subject of absolute confiscation out and out is one that does not commend itself to many thinking people, and therefore this Society advocates Mr. Henry George's subtle plan of gradually imposed taxation, increasing till the whole value of the land has been secured, allowance being made for the improved value conferred by the capital and labour of its successive owners. The Fabian Society strenuously objects to this, holding that the capital value and the land value of estates are not capable of being distinguished. Capital is wealth, produced by human labour, which is not immediately required for human wants, and as capital is the result of work, the workers are entitled to it. That seems to be the argument of one section of socialists, who would seize and distribute everything if they could, land, money, chattels and all.

CHAPTER VII.

SUBSIDIARY INTERESTS. HENRY GEORGE'S EXAMPLE OF THE PIRATE. VESTED INTERESTS. DEFECTS IN THE LAND LAWS. SUGGESTED REMEDIES. THE CRUX OF THE MATTER.

THE most recent official figures show that 27,972,000 acres, or 85.7 per cent. of the whole cultivated land in Great Britain, are farmed by tenants, while 4,672,000 acres, or 14.3 per cent. are in the hands of landlords. The money that must have been spent on the improvement of this large acreage, and which is being spent annually to prevent deterioration is very great, and any scheme for nationalisation that did not recognise the rights of the owners, whether they be proprietors of the freehold or tenants for years, as well as their liabilities, would, on the face of it, be one of the grossest pieces of injustice that has ever been perpetrated. Disputes between landlords and their tenants are inevitable, and it may be that the former have it in their power, if so minded, to inflict wanton hardships on the latter, but this is a state of things that has been much softened of late years, and is capable of being still further mollified by Act of Parliament at any time. No one disputes the fact that some of the incidents of tenure are harsh and altogether unsuited to the age in which we live, but this is a very different thing from asserting

that deliberate confiscation, whatever form it may take, is the best remedy. Let us look for a moment at the tremendous interests involved. In 1889, Mr. Robert Giffen, in computing the capital value of realised property, arrived at the conclusion that the profits of farmers, if capitalised at eight years' purchase, would amount to nearly £465,000,000, while the capital value of Railways at twenty-eight years' purchase, was more than a billion. Lands, rent-charges, tithes, &c., at twenty-six years' purchase, he represented by a capital sum of one billion, five hundred millions. Land, with houses on it, at two billions one hundred millions, and Canals, Gas-works, Water-works, Mines, Quarries, and so on, at about £300,000,000. The total annual income derived from real property in this country is probably about £220,000,000, the total annual national income about £1,300,000,000, and the wages of manual labourers about £600,000,000, more or less. These figures are of course only approximate.

The advocates of land restoration must show—for the onus of proof lies on them—that the people were once in possession of the land which they now claim, and this is utterly beyond their power, for it is contrary to history, and what we know of the habits and customs of our forefathers. They must also show that a substantial improvement would result from confiscation, and further, that it would be just and right to ignore all the circumstances under which landed property has been acquired. Take the case of a trader—

a man of the people—retiring from business after a life of anxiety and toil, and with part of the money he has worked for, purchasing the freehold of an estate on which to spend the remainder of his days. Legally his position is stable. Is it so morally, that is the question? In order to show that it is not, the advocates of confiscation advance a number of assertions; arguments they cannot be called. They say, *inter alia*, that the successful man of business has ground his workpeople down for years, and heaped up gold from wasting flesh and blood. They say also that the person who sold him the land has either done the same, or inherited his property from ancestors who acquired it in days when might was right, and the weakest invariably went to the wall. There may be particular instances in which these charges could be proved, but it is sought to apply them universally, irrespective of facts and upon general principles, as an excuse for wholesale confiscation.

Mr. Henry George once likened the present landowners to the descendants of pirates, and advocates a practical forfeiture on the following extraordinary grounds:—"The galleys that carried Cæsar to Britain, the accoutrements of his legionaries, the baggage that they carried, the arms that they bore, the buildings that they erected; the scythed chariots of the ancient Britons, the horses that drew them, their wicker boats and wattled houses—where are they now? But the land for which Roman and Briton fought, there it is still. That British soil is yet as

fresh and as new as it was in the days of the Romans. Generation after generation has lived on it since, and generation after generation will live on it yet. Now, here is a very great difference. The right to possess and to pass on the ownership of things that in their nature decay, and soon cease to be, is a very different thing from the right to possess and to pass on the ownership of that which does not decay, but from which each successive generation must live."

To show how this difference between land and such other species of property as are properly styled "wealth" is said to support the argument against the vested right of landowners, let us illustrate again.

"Captain Kidd was a pirate. He made a business of sailing the seas, capturing merchantmen, making their crews walk the plank, and appropriating their cargoes. In this way he accumulated much wealth. Let us suppose that Captain Kidd, having established a large profitable piratical business, left it to his son, and he to his son, and so on, until his great-great-grandson, who now pursues it, has come to consider it the most natural thing in the world that his ships should roam the sea, capturing peaceful merchantmen, making their crews walk the plank, and bringing home to him much plunder, whereby he is enabled, though he does not work at all, to live in very great luxury, and to look down with contempt upon people who have to work. But at last, let us suppose, the merchants get tired of having their ships sunk and

their goods taken, and sailors get tired of trembling for their lives every time a sail lifts above the horizon, and they demand of society that piracy be stopped."

"Now, what should society say, if Mr. Kidd got indignant, appealed to the doctrine of vested rights, and asserted that society was bound to prevent any interference with the business that he had inherited, and that, if it wanted him to stop, it must buy him out, paying him all that his business was worth—that is to say, at least as much as he could make in twenty years' successful pirating, so that if he stopped pirating, he could still continue to live in luxury off the profits of the merchants, and the earnings of the sailors?"

"What ought society to say to such a claim as this? There will be but one answer. Society should tell Mr. Kidd that his was a business to which the statute of limitations, and the doctrine of vested rights did not apply; that because his father, and his grandfather, and his great-great-grandfather pursued the business of capturing ships and making their crews walk the plank, that was no reason why he should be permitted to pursue it. Society, we shall all agree, ought to say he would have to stop piracy, and stop it at once, and that without getting a farthing for stopping."

"Or supposing it had happened that Mr. Kidd had sold out his piratical business to Smith, Jones, or Robinson, we shall all agree that society ought to say that their purchase of the business gave them no greater right than Mr. Kidd had. We shall all agree

that that is what society *ought* to say. Observe, I do not ask what society *would* say. For ridiculous and preposterous as it may appear, I am satisfied that under the circumstances I have supposed, society would not for a long time say what we have agreed it ought to say. Not only would all the Kidds loudly claim that to make them give up their business without full recompense would be a wicked interference with vested rights, but the justice of this claim would at first be assumed as a matter of course by all, or nearly all, the influential classes—the great lawyers, the able journalists, the writers for the magazines, the eloquent clergymen, and the principal professors in the principal universities. Nay, even the merchants and sailors, when they first began to complain, would be so tyrannised and browbeaten by this public opinion, that they would hardly think of more than of buying out the Kidds, and, wherever here and there anyone dared to raise his voice in favour of stopping piracy at once and without compensation, he would only do so under penalty of being stigmatised as a reckless disturber and wicked foe of social order."

"Consider: is not the parallel I have drawn a true one? Is it not just as much a perversion of ideas to apply the doctrine of vested rights to property in land, when these are its admitted fruits, as it would be to apply it to the business of piracy? In what does the claim of the landholders differ from that of the hereditary pirate, or the man who has bought out a piratical business? Because I have inherited

or purchased the business of robbing merchantmen, says the pirate, therefore respect for the rights of property must compel you to let me go on robbing ships and making sailors walk the plank until you buy me out. Because we have inherited or purchased the privilege of appropriating to ourselves the lion's share of the produce of labour, says the landlord, therefore you must continue to let us do it, even though poor wretches shiver with cold and faint with hunger, even though, in their poverty and misery, they are reduced to wallow with the pigs. What is the difference?" ("*The Land Question.*")

If Mr. George had asked "What is the similarity between the case of the landowner and that of the pirate?" the question would, we think, have been a more pertinent one. However, many differences and not merely one, are obvious at first sight. Piracy is a trade and not a property, and it is, and always has been illegal. Theft when carried out systematically, whether supported by violence or not, is a trade that no community has ever tolerated, and the more uncivilised the community the more drastically such an offence is punished. If a landlord filches the village green, that is theft, and if he were prosecuted and thrown into prison for his pains, we should be the first to say that it served him right. Such a case would coincide with Mr. George's illustration of the pirate, for something is stolen; in both cases there is an outrageous violation of the first principles of common honesty and a breach of the law.

Suppose this country were at war with a foreign power, and suppose also that one of our privateers stopped and stripped a merchantman belonging to a subject of that power, a matter of every-day occurrence in the old French and Spanish complications, what would Mr. George propose to do with the proceeds? Gibraltar was taken from the Spaniards and we keep it. All England was seized by the Normans who kept it, and successive laws for hundreds of years have pronounced the seizure legal. True, there is a vast difference between landed property and goods, for no power on earth can restore the latter if they have been made away with, but in both cases there is a similarity which the advocates of confiscation persistently overlook, and that is the injury that would be done to intermediate holders who are perfectly innocent in the matter, and had no knowledge whatever of the circumstances under which the property was originally acquired. If the law ever did legalise piracy, it would be by protecting the pirate, taxing his plunder and permitting him to sell it. Even in this case it would be grossly unjust for the law to stultify itself by making the purchaser hand over what he had bought under its protection. More harm would be done by such an interference, particularly when the property had changed hands perhaps half a dozen times or more, then by letting the matter alone, and the very same principle would apply to land that had been deliberately stolen. If the law allowed it to be stolen,

confirmed the thief in his possession, taxed him for its possession, and finally permitted him to sell it, it seems to us that it could not morally turn round and appropriate it on the ground that it had been wrongly acquired in the first instance. When, moreover, the case is complicated by the presence of other interests, such as the ownership of houses, workshops, railways, water-works, and so on, how could the law interfere without at the same doing irreparable injury not only to countless innocent persons but to its own reputation and very existence as well? When a man steals, no matter what, let him be punished and forced to surrender his ill-gotten goods, but do not confirm him in the possession of them to injure a third person. No Statute of Limitations runs a single hour against Fraud, and if the most powerful Landlord in Great Britain can be shown to have acquired property stolen, no matter when, he can be made to restore it. The difficulty in all these cases lies with the proof which more often than not passes away with the generation, and for that reason it is advisable to take proceedings at once.

All the moral arguments advanced against the proposed compulsory transfer of tithe without compensation, apply *mutatis mutandis*, to the suggested seizure of landed property. In both instances the claims of innocent third parties confirmed after long ages of peaceable possession, prevent any such schemes being carried into effect, but if this is nothing in the estimation of the advocates of this kind of oriental

justice, there is one fact with which they would have to reckon whether they liked it or not, and that is the physical resistance that would certainly be offered to their proceedings. Landowners and Titheowners, though numerous enough, comprise but a small fraction of the population, which it would be easy to sweep away if they stood alone and unprotected, but the interests wrapped up with theirs are so great and widespread that everyone who had anything whatever to lose would be prejudicially affected in a greater or lesser degree by any act of injustice directed against them. It is, perhaps, unnecessary to point to the army of mortgagees who have advanced their own and often trust money upon the security of landed property, to the owners of rent charges, to tenants for terms of years, long or short, who have established a business and acquired a goodwill capable of being appraised in the open market, to the hundreds of thousands of persons who make their living by buying and selling, or in some way dealing with farm produce. All these people have heavy responsibilities at stake, and for them to be captivated by the noisy diatribes of agitators with nothing to lose and everything to gain, would be so contrary to human nature that we may safely prophesy what their course would be. They would demand compensation to a man, and under the present constitution of the Empire are sufficiently powerful to enforce it. Nothing short of revolution would be sufficient to dispossess one section of the community for the benefit of the other,

or to enrich the poor at a stroke.

It is, however, quite possible that the State may some of these days acquire possession of some landed property for the benefit of the people at large, and this nationalisation of part of the land might, if it were carried out with discretion and on principles of fairness, be beneficial to all. This scheme would involve purchase and be followed by a system of leasing in which everyone would be able to acquire a certain acreage in case he wanted it, at a rent fixed in accordance with the quality of the soil, and its accessibility. There are, however, a large number of people who have no idea of the management of land, nor capital to enable them to farm it even if they had, and this would effectually prevent the realisation of an universal scheme. There are in London alone five millions of human beings, who would—speaking generally—starve on the soil, even in the midst of plenty, and as they would indirectly contribute a large proportion of the money necessary to enable the State to act, it is perhaps not so very absurd to imagine them asking what they were going to receive in return for the sacrifice they had been compelled to make. The whole subject of State acquisition bristles with difficulties that cannot be swept away with a high hand. It would have to be introduced cautiously and partially realised as an experiment in the first instance, a work of time, and not of sudden and headlong emergency.

It is, however, by no means certain that the

interference of the State in private matters is an unmixed blessing. Officialdom has its evils, one being the tedious routine that is inseparably connected with it, and the expense consequent upon the maintenance of public offices and a large, and high salaried staff. The office routine of the Chancery Division of the High Court works like a machine, but nevertheless, the worst fate that can overtake anyone is to have his property administered there. The endless delays, the worry, the expense, the limpet-like tenacity with which every farthing and every acre is held, have long since made Chancery administration a reproach, and yet its organisation has been complete for many centuries. It is not to be expected that the routine of a new office would be conducted on more satisfactory principles, but rather the contrary.

There can be no question that the Law affecting real property might be very materially improved without in any way touching private interests. Some of the incidents affecting Copyhold tenancies are irritating in the extreme and provision might be made for the abolition of Heriots (the best beast or other chattel which, by the custom of a few Copyhold Manors, the lord has a right to seize on the death of or alienation by his tenant) arbitrary fines on alienation, reliefs, forfeitures, and the property in minerals and timber, which, though nominally belonging to the Lord are absolutely useless to him for he cannot take either without the tenants consent. The right of the eldest son to inherit freeholds to the utter exclusion of his

brothers and sisters is also regarded by many as a hardship now that the reason for the preference no longer exists, and there are many other anomalies, depending on an obsolete feudal system, which might very well be relegated to the past.

But worse, far worse than anything, is the cumbrous method of conveyance with its attendant costs frequently run up by solicitors and other interested parties till they assume formidable and unnecessary proportions. The expense attendant upon a loan on landed property is often inconceivable. The abstract of title, requisitions on title and replies thereto, a draft mortgage, a fair copy for the approval of the mortgagor's solicitor, and the mortgage deed itself, involve an expense that no one in his senses would submit to voluntarily. It is the pressing necessity of the mortgagor and not his will that consents to such a roundabout and ridiculous system of procedure. On the other hand a person lending money on the security of landed property is more frequently than not disabused of the idea that all the expense will be thrown on the shoulders of the unfortunate mortgagor. Not a foot of land in Great Britain but what has before now, cost far more than its value in legal expenses. To simplify the transfer of land and to ruthlessly cut down costs is one of the reforms to which attention might very well be directed; it is of infinitely more importance than attempts, certain to be abortive, to deprive legal owners of their rights upon general principles which,

if universally applied, would render the possession of any kind of property extremely precarious, lead to foreign investments, the depletion of money, general insecurity, and the ruin of trade.

The advocates of nationalisation of the land have one genuine and very grievous complaint, which it is as well to meet in a spirit of fairness, for meet it in some way we must. It is this. Some landowners, nearly always men of a newly acquired social position, seem to think that they can with impunity, imitate the practices of the Barons of old. They are perpetually at war with their tenants and one another, invoking the aid of the law on the most trivial pretexts, and ruling those under them with a rod of iron. Such as they are always on the look-out for the opportunity of encroaching, be it ever so little, and not infrequently grossly mismanage or utterly neglect the property they have acquired, either by turning it to unprofitable uses, or allowing it to remain idle. Cases are not wanting in which landlords of this type have entered into possession of prosperous villages and left them after some years of misrule, little better than wastes, and it is they who are cited as examples of a class by the agitators. Such landlords are rare, but they speedily become notorious, and it is to the advantage of their own fellows to favour any legislation that will stamp out the possibility of such practices and so remove one great argument at the disposal of their opponents. No one, however much a *laudator temporis acti*, could

argue the right of an owner of landed or any other species of property to do as he likes with his own, if by doing so he trespasses not merely on the rights but on the privileges of others. If, therefore, a man so far forgets what is due to others as to become a common nuisance, a blocker up of public footpaths, an encroacher, a perverter of his property to trivial uses, an habitual litigant and a taskmaster rather than a friend to the people whose necessities compel them to live under his rule, it is not for us to defend him in any of these things, for such a course of conduct or anything approaching it is diametrically opposed to the interest of the entire community.

In ancient Rome there was a law that worked so well that it is a wonder it has not been imported into our judicial system in common with others of equal importance from the same source. Justinian, Lib. i. Tit. xxiii., thus recapitulates it :—"*Furiosi quoque et prodigi, licet majores viginti quinque annis sint, tamen in curatione sunt adgnatorum ex lege duodecim tabularum. Sed solent Romæ præfectus urbis vel prætor et in provinciis præsides ex inquisitione eis dare curatores.*" (Madmen and prodigals, although past the age of twenty-five, are yet placed under the curatorship of their *agnati* by the law of the Twelve Tables. But, ordinarily, curators are appointed for them, at Rome by the Prœfect of the city or the Prœtor, in the provinces by the *Prœsides* after enquiry into the circumstances has been made.)

True, this interdict applied only where a prodigal

waste of goods was taking place, but it might very well be re-enacted afresh here with amplifications, and extended to all cases in which the owner of property, no matter of what kind, was proved to be employing it to the positive detriment of those around him. By virtue of such a law, a bad landlord would have to defend his practices before a court of competent jurisdiction which could, if a satisfactory case were made out against him, turn him out of possession and give the management of his property to an official appointed by the State. So long as he lived he would receive the proceeds, less the expenses of management, and when he died, the property would pass under his will, if he made one, and if not, then to his heir-at-law, and the curatorship would be at an end. There is no confiscation here, but a scheme for public management of property that the owner had first been proved—to the satisfaction of a jury if necessary—to be utterly incapable of managing himself. Some such law as this would injure no one, but on the contrary would benefit a great many, the owner himself included, and it is commended to the consideration of those whose principal grievance is against landlords as a class, because some few among them are deserving of censure.

In this short defence of private ownership of tithe and landed property, the principal ground taken has been that it would be unjust to deprive anyone of his own without compensation, that is to say property which the law has confirmed him in the possession

of. From a legal point of view a defence would not be called for, until the claimants had made out a *primâ facie* case, and this they could never do. But there is an ethical side to all these questions, and if that can be shewn to be in favour of the people and against those in possession, no power on earth could ever support the claims of the latter for long. It is, however, not in their favour, and they know it, and moreover it is not alleged to be in their favour except by a comparative few who would reap where they have not sown. In all ages, landed property has been the subject of private ownership. It was so in Babylon and Egypt thousands of years before the founding of Rome, and has been so ever since, except in barbarous countries where there were no written laws and where every man contributed to the common stock and helped himself from a common fund according to his necessities. Archdeacon Paley tells us there are no traces of property in land in Cæsar's account of Britain; little of it in the history of the Jewish Patriarchs; none of it among the nations of North America; the Scythians are expressly said to have appropriated their houses and cattle, but to have left their lands in common. Cobbett, in his "Legacy to Labourers," says:—"The earth, the water, the air, and all that in them was, were the common and general property of mankind; and as to any particular spot of earth, piece of water, or tree, or other vegetable or living creature, one man could have no more claim to any of them than any other man had." No

doubt all this is quite true; nobody ever denied that among nomadic peoples and those of extremely primitive habits, land may have been, and indeed is held in common, but it is worthless or nearly so until cultivated, and directly that happens the person who effects the improvement has obviously a substantial and special interest in the soil. We have seen how this developes in a perfectly natural manner through degrees of temporary possession to a permanent ownership. Herbert Spencer says, "Men having got themselves into this dilemma * * * must get out of it as best they can and with as little injury to the landed class as may be." We say they must get out of it, not merely for their own credit's sake but in their own interest, by rendering unto Cæsar the things that are Cæsars, even as they have been enjoined.

APPENDIX.

6 & 7 WILL. IV. C. 71.

An Act for the Commutation of Tithes in England and Wales. [13*th August* 1836.]

1. Whereas it is expedient to amend the Laws relating to Tithes in *England* and *Wales*, and to provide the Means for an adequate Compensation for Tithes, and for the Commutation thereof. *Appointment of Commissioners.*

II. Style of Commissioners.

III. Commissioners to Report to Secretary of State. Annual Report to be laid before Parliament.

IV. Power to appoint Assistant Commissioners, Secretary, Assistant Secretary, &c. Limiting the Number of Appointments.

V. Commissioners not to sit in the House of Commons.

VI. Operation of Act as to Appointment of Commissioners, &c., limited to Five Years.

VII. Salaries of and Allowances to Commissioners and Assistant Commissioners, Secretary and other Officers.

VIII. Such Salaries, Allowances, and other Expenses, how to be paid.

IX. Commissioners and Assistant Commissioners to take an Oath. Form of Oath.

X. Commissioners or Assistant Commissioner may summon and examine Witnesses.

XI. Commissioners may delegate Powers to Assistant Commissioners, except the Powers to be exercised under their Seal.

XII. Meaning of certain Words.

XIII. When the Ownership of Lands or Tithes or Patronage is vested in the Crown who shall be deemed the Owner or Patron.

XIV. When the same Person is Owner of Lands and Owner of Tithes, he may be dealt with in both characters.

XV. In case the Patron or Owner is under legal Disability, who to act.

XVI. Acts may be done by Agents duly authorised.

XVII. Parochial Meetings may be called, at which Owners of Two Thirds in Value may agree on the Sum to be paid to the Tithe Owners, which Agreement shall bind the whole Parish.

XVIII. Provisional Agreements may be made at the Parochial Meetings.

XIX. Proportional Interest in Lands and Tithes how to be estimated for the Purposes of this Act.

XX. Meeting may be adjourned.

XXI. Form of Parochial Agreement.

XXII. Commissioners to frame and circulate Forms of Agreements, &c.

XXIII. Commissioner or Assistant Commissioner may attend to advise Terms of Agreement.

XXIV. Suits and Differences may be referred to Arbitration.

XXV. Agreements pending at the Time of the passing of this Act, if completed and confirmed by the Commissioners, to be as valid as Parochial Agreements.

XXVI. Consent of Patron to be given to every Agreement for Commutation of Ecclesiastical Tithe.

XXVII. Agreement to be confirmed by the Commissioners.

XXVIII. Agreement to be communicated to Bishop of the Diocese previous to its being confirmed.

XXIX. Land, not exceeding 20 Acres, may be given as Commutation for Tithes, &c.

XXX. Commissioners to satisfy themselves of the Title of such Land, &c.

XXXI. Agreements for giving land to operate as Conveyances.

XXXII—XXXIV. Relates to the appointment of Valuers who are authorised to apportion the Rent-Charge in lieu of Tithe.

XXXV. Old Plans and Surveys may be used if the Valuers think proper.

XXXVI. After 1st October, 1838, Commissioners may ascertain total Value of Tithes in any Parish in which no previous Agreement has been made.

XXXVII. And be it enacted, That in every Case in which the Commissioners shall intend making their Award, Notice thereof shall be given in such Manner as to them shall seem fit; and after the Expiration of Twenty-one Days after such Notice shall have been given the Commissioners or some Assistant Commissioner shall, except in the Cases for which Provision is hereinafter made, proceed to ascertain the clear Average Value (after making all just Deductions on Account of the Expenses of collecting, preparing for Sale, and marketing where such Tithes have been taken in Kind), of the Tithes of the said Parish, according to the Average of Seven Years preceding *Christmas* in the Year One thousand eight hundred and thirty-five: Provided that if during the said Period of Seven Years, or any Part thereof, the said Tithes or any Part thereof shall have been compounded for or demised to the Owner or Occupier of any of the said Lands in consideration of any Rent or Payment instead of Tithes, the Amount of such Composition or Rent or Sum agreed to be paid instead of Tithes shall be taken as the clear Value of the Tithes included in such Composition, Demise, or Agreement during the Time for which the same shall have been made; and the Commissioners or Assistant Commissioner shall award the average annual Value of the said Seven Years so ascertained as the Sum to be taken for calculating the Rent-charge to be paid as a permanent Commutation of the said Tithes: Provided also, that whenever it shall appear to the Commissioners that the Party entitled to any such Rent or Composition shall in any One or more of the said Seven Years have allowed and made any Abatement from the Amount of such Rent or Composition on the Ground of the same having in any such Year or Years been higher than the Sum fairly payable by way of Composition for the Tithe, but not otherwise, then in every such Case such diminished Amount, after making such Abatement as aforesaid, shall

be deemed and taken to have been the Sum agreed to be paid for any such Year or Years: Provided also, that in estimating the Value of the said Tithes the Commissioners or Assistant Commissioner shall estimate the same without making any Deduction therefrom on account of any Parliamentary, Parochial, County, and other Rates, Charges, and Assessments to which the said Tithes are liable; and whenever the said Tithes shall have been demised or compounded for on the Principle of the Rent or Composition being paid free from all such Rates, Charges, and Assessments, or any Part thereof, the said Commissioners or Assistant Commissioner shall have regard to that Circumstance, and shall make such an Addition on account thereof as shall be an Equivalent.

XXXVIII. Commissioners in Certain Cases may increase or diminish the Sum to be paid for Commutation.

XXXIX. Special Adjudications how to be made.

XL. How the Tithe of Hops, Fruit, and Garden Produce is to be valued.

XLI. How the Tithe of Coppice Wood is to be valued.

XLII. Provision for the Change of Culture of Hop Grounds and Market Gardens.

XLIII. Provision for valuing Tithes of Lands to which the Average of Seven Years cannot apply.

XLIV. Moduses, &c., how to be allowed for in the Award.

XLV—XLIX. Relate to the conduct of legal proceedings in case of dispute.

L. Commissioners to award total Sum to be paid for the Tithes of the Parish.

LI. Commissioners may hear and determine Objections to the Award.

LII. Award to be confirmed by the Commissioners.

LIII. Commissioners to summon a Parochial Meeting to appoint Valuers.

LIV. If Valuation not completed in Six Months' Commissioners to apportion.

LV. Form of Apportionment.

LVI. And be it enacted, That immediately after the passing of this Act, and also in the month of *January* in every Year, the Comptroller of Corn Returns for the Time being, or such other Person as may from Time to Time be in that Behalf authorised by the Privy Council, shall cause an Advertisement to be inserted in the *London Gazette*, stating what has been, during Seven Years ending on the *Thursday* next before *Christmas Day* then next preceding, the Average Price of an Imperial Bushel of *British* Wheat, Barley, and Oats, computed from the weekly Averages of the Corn Returns.

LVII. And be it enacted, That every Rent-charge charged upon any Lands by any such intended Apportionment shall be deemed at the Time of the Confirmation of such Apportionment, as herein-after provided, to be of the Value of such Number of Imperial Bushels and Decimal Parts of an Imperial Bushel of Wheat, Barley, and Oats as the same would have purchased at the Prices so ascertained by the Advertisement to be published immediately after the passing of this Act, in case One Third Part of such Rent-charge had been invested in the Purchase of Wheat, One Third Part thereof in the Purchase of Barley, and the remaining Third Part thereof in the Purchase of Oats, and the respective Quantities of Wheat, Barley, and Oats so ascertained shall be stated in the Draft of every Apportionment.

LVIII. Rent-charge may be specially apportioned.

LIX. Commissioners may employ Surveyors.

LX. Apportionment to be signed by the Person making it, and sent with the Plan to the Commissioners.

LXI. Commissioners may hear and determine Objections to Apportionment.

LXII. Owners of Lands chargeable with Rent-charge may give Land instead thereof.

LXIII. Confirmation by the Commissioners.

LXIV. Transcripts of the Award to be sent to the Registrar of the Diocese and to the Incumbent and Churchwardens.

LXV. Commissioners may require Notice of Agreements or Awards to be given to Reversioner.

LXVI. Agreements &c. not to be questioned after Confirmation.

LXVII. Lands to be discharged from Tithes, and Rent-charge paid in lieu thereof.

LXVIII. Lands to be free from Tithes when Lands are given in lieu thereof.

LXIX. Rent-charge to be liable to Parochial and County Rates.

LXX. How Rates and Charges are to be recovered.

LXXI. Rent-charge to be subject to the same Incumbrances and Incidents as Tithe before this Act.

LXXII. Apportionment may be altered by Commissioners of Land Tax, if desired.

LXXIII—LXXVIII. Relate to costs, charges and expenses for carrying out the provisions of the Act.

LXXIX. If Tenant of Lands at Rack Rent dissents from paying the Rent-charge, the Landlord may take the Tithes during the Tenancy.

LXXX. Tenant paying Rent-charge to be allowed the same in account with his Landlord.

LXXXI. When Rent-charge is in arrear for Twenty-one Days after half-yearly Days of Payment, the Person entitled thereto may distrain.

LXXXII. When Rent-charges are in arrears for Forty Days after half-yearly Days of Payment, and no sufficient Distress on the Premises, Writ to be issued directing Sheriff to summon Jury to assess Arrears.

LXXXIII. Account how to be rendered.

LXXXIV. For Recovery of Rent-charges from Quakers.

LXXXV. Powers of Distress and Entry to extend to all Lands within the Parish occupied by the Owner or under the same Landlord or Holding.

LXXXVI. Powers of 4 & 5 W. 4, to extend to Rent-charges under this Act. (Apportionment of Periodical Payments).

LXXXVII. Provision for the Sale of Buildings and the Sites thereof rendered useless or unnecessary by the Commutation of Tithes.

LXXXVIII. Leases of Tithes may be surrendered.

LXXXIX—XCVII. Embrace Technical Clauses relative to Stamp Duties, the limits within which the Act shall apply (England and Wales only), &c., &c.

7 & 8 VIC. C. 44.

An Act for the Regulation of Suits relating to Meeting Houses and other Property held for religious Purposes by Persons dissenting from the United Church of *England* and *Ireland*.

[19th *July* 1844.]

I. Whereas an Act was passed in the First Session of the First Year of the Reign of King *William* and Queen *Mary*, intituled *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of* England *from the Penalties of certain Laws:* And whereas an Act was passed in the Nineteenth Year of the Reign of King *George* the Third, intituled *An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters:* And whereas an Act was passed in the Fifty-third Year of the Reign of King *George* the Third, intituled *An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties:* And whereas an Act was passed by the Parliament of *Ireland* in the Sixth Year of the Reign of His Majesty King *George* the First, intituled *An Act for exempting the Protestant Dissenters of this Kingdom from certain Penalties to which they are now subject:* And whereas an Act was passed in the Fifty-seventh Year of the Reign of King *George* the Third, intituled *An Act to relieve Persons impugning the Doctrine of the Holy Trinity from certain Penalties in* Ireland: And whereas prior to the passing of the said recited Acts respectively, as well as subsequently thereto, certain Meeting Houses for the Worship of God, and Sunday or Day Schools (not being Grammar Schools), and other charitable Foundations, were founded or used in *England* and *Wales* and *Ireland* respectively for Purposes beneficial to Persons dissenting from the Church of *England* and the Church of *Ireland* and the United Church of *England* and *Ireland* respectively, which were unlawful prior to

the passing of those Acts respectively, but which by those Acts respectively were made no longer unlawful: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That with respect to the Meeting Houses, Schools, and other charitable Foundations so founded or used as aforesaid, and the Persons holding or enjoying the Benefit thereof respectively, such Acts, and all Deeds or Documents relating to such charitable Foundations, shall be construed as if the said Acts had been in force respectively at the respective Times of founding or using such Meeting Houses, Schools, and other charitable Foundations as aforesaid.

II. And be it enacted, That so far as no particular religious Doctrines or Opinions, or Mode of regulating Worship, shall on the Face of the Will, Deed, or other Instrument declaring the Trusts of any Meeting House for the Worship of God by Persons dissenting as aforesaid, either in express Terms, or by reference to some Book or other Document as containing such Doctrines or Opinions or Mode of regulating Worship, be required to be taught or observed or be forbidden to be taught or observed therein, the Usage for Twenty-five Years immediately preceding any Suit relating to such Meeting House of the Congregation frequenting the same shall be taken as conclusive Evidence that such religious Doctrines or Opinions or Mode of Worship as have for such Period been taught or observed in such Meeting House may properly be taught or observed in such Meeting House, and the Right or Title of the Congregation to hold such Meeting House, together with any Burial Ground, Sunday or Day School, or Minister's House attached thereto; and any Fund for the Benefit of such Congregation, or of the Minister or other Officer of such Congregation, or of the Widow of any such Minister, shall not be called in question on account of the Doctrines or Opinions or Mode of Worship so taught or observed in such Meeting House: Provided nevertheless, that where any such Minister's House, School, or Fund as aforesaid shall be given or created by any Will, Deed, or other Instrument, which shall declare in express Terms, or by such

Reference as aforesaid, the particular religious Doctrines or Opinions for the promotion of which such Minister's House, School, or Fund is intended, then and in every such Case such Minister's House, School, or Fund shall be applied to the promoting of the Doctrines or Opinions so specified, any Usage of the Congregation to the contrary notwithstanding.

III. Provided always, and be it enacted, That nothing herein contained shall affect any Judgment, Order, or Decree already pronounced by any Court of Law or Equity; but that in any Suit which shall be a Suit by Information only and not by Bill, and wherein no Decree shall have been pronounced, and which may be pending at the Time of the passing of this Act, it shall be lawful for any Defendant or Defendants for whom the Provisions of this Act would have afforded a valid Defence if such Suit had been commenced after the passing of this Act to apply to the Court wherein such Suit shall be pending; and such Court is hereby authorized and required, upon being satisfied by Affidavit or otherwise that such Suit is so within the Operation of this Act, to make such Order therein as shall give such Defendant or Defendants the Benefit of this Act; and in all Cases in which any Suit now pending shall be stayed or dismissed in consequence of this Act, the Costs thereof shall be paid by the Defendants, or out of the Property in question therein, in such Manner as the Court shall direct.

54 VICTORIA C. 8.

An Act to make better provision for the Recovery of Tithe Rent-charge in England and Wales.

[26*th March*, 1891.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I.—(1.) Tithe Rent-charge as defined by this Act issuing out of any lands shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier of such lands, and any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the Tithe Rent-charge by the occupier shall be void.

(2.) Where the occupier is liable under any contract made before the passing of this Act to pay the Tithe Rent-charge, then he shall cease to be bound by that part of his contract, but he shall be liable to pay to the owner such sum as the owner has properly paid on account of the Tithe Rent-charge which such occupier is liable under his said contract to pay, exclusive of any costs incurred or paid by the owner in respect of such Tithe Rent-charge, and every receipt given for such sum shall state expressly that the sum is paid in respect of that Tithe Rent-charge : Provided that where the lands, out of which any Tithe Rent-charge issues, are occupied by several occupiers who have contracted to pay the Tithe Rent-charge, any of such occupiers shall be liable only to pay such proportion of the sum paid by the owner of the lands on account of that Tithe Rent-charge as the rateable value of the lands occupied by him bears to the rateable value of the whole of the lands occupied by such occupiers.

(3.) Such sum shall be recoverable from the occupier by distress in like manner as is provided by sections eighty-one and eighty-five of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, and the enactments amending those sections, and not otherwise.

II. Recovery of Tithe Rent-charge through County Court.

III. Rules for carrying the Act into effect.

IV. Where a receiver appointed under this Act of the rents and profits of any lands satisfies the County Court that the lands are let on such terms as not to reserve a rent sufficient to enable the receiver to recover from the owner thereof the sum ordered to be recovered, the Court, after such service on the owner and occupier of the lands as may be prescribed, and after hearing such owner and occupier if they appear and desire to be heard, may direct that the order for such recovery shall be executed as if the occupier were the owner of the lands: Provided that any such occupier shall be entitled in addition to any other remedy, unless he would have been liable to pay the Tithe Rent-charge under any contract made before the passing of this Act, to deduct from any sums at any time becoming due from him to the landlord under whom he holds, any amount which shall have been recovered from him under this section in respect of Tithe Rent-charge or costs, with interest thereon at the rate of four per centum per annum: Provided further, that such occupier shall be entitled, notwithstanding anything in this Act, to recover from such landlord by action at law any such amount which shall have been recovered from him under this section as aforesaid as money paid on the account of such landlord.

V. Restrictions as to costs.

VI. Rating of owner of Tithe Rent-charge.

VII. Power of appeal.

VIII. Remission of Tithe Rent-charge when exceeding two-thirds annual value of land.

IX—XII. Relate to technical matters—Definitions of certain words, the limits within which the Act shall apply (England and Wales only), &c., &c.

deals succinctly with the establishment and development of Christianity in Wales, shows that the Church is native not alien, traces the rise and progress of Nonconformity, and concludes with a hopeful review of the present position of the Church in Wales. There is a useful appendix which contains, amongst other things, the full text of the Gee spoiliation scheme and some good pictures of the Welsh Cathedrals and more interesting Churches."—*Western Mail, Cardiff.*

"This *brochure* has been called forth by the Welsh Suspensory Bill. It comprises seven chapters of an historical nature, an appendix, and some illustrations of Welsh Cathedrals and Churches, and its object is to show what a blessing the Anglican Church is to Wales, and how wicked are the spoiliators."—*The Daily Chronicle.*

"Those who have organized the attack upon the Church in Wales have at least found Churchmen both in the Principality, and in all other parts of the United Kingdom ready to meet the onslaught, and if energy and determination go for anything, to repulse it. One of the *strongest factors in this defence of the threatened institution is the* ANTI-LIBERATION SOCIETY, whose head offices are at 47, Essex Street, Strand, W.C. Besides promoting public meetings throughout the country, the Society is scattering broadcast large quantities of literature, combating the arguments of the Church destroyers. Under its auspices, no less than four millions of books and pamphlets have been circulated. One of the most valuable contributions to the literature of defence is the historical account of "The Established Church in Wales,' by Mr. J. H. SLATER. In this book, which is profusely illustrated with very beautiful engravings, is narrated in a very interesting manner the story of the establishment and development of the Christian Church in the Principality. Every page affords evidence of the author's careful research and in so far as we have been able to compare the volume with other authorities, we find that the facts are plainly and fairly given, without distortion. Mr. SLATER'S book should be in the hands of every earnest Churchman who takes an interest in the present struggle."—*Blyth Examiner.*

"Mr. J. H. SLATER'S Established Church in Wales ("ANTI-LIBERATION SOCIETY,") is a History of the Church in Wales, with an appendix containing things calculated to make against Disestablishment. We recognize the force of the arguments."—*Pall Mall Gazette.*

"The Established Church in Wales. ANTI-LIBERATION SOCIETY, 47, Essex Street, Strand.—Mr. J. H. SLATER has here specially written this account of the origin, development and maturity of the Established Church in Wales, for the ANTI-LIBERATION SOCIETY'S historical Church defence leaflet campaign; and this task has been accomplished very exhaustively in the 114 pages of this book, especially in the condemnation of the Welsh Suspensory Bill which, however, the author does not appear in the least to fear, as "there will come to the side of the Church more and more of those who place justice above the political necessities of the moment, and the Church will stand against all the attacks of her enemies." Mr. SLATER, we note, acknowledges the assistance rendered in the compilation of the book by the Rev. Dr. Purefoy Colles, as Chairman, and Mr. H. W. L. Grant, as Hon. Sec. of the ANTI-LIBERATION SOCIETY; and we further observe that the administrative committee of the Society are pleading for £2,000 to carry on and extend its operations against the disestablishment movement. The work is enriched by a number of views of Welsh Cathedrals."—*Hackney and Kingsland Gazette.*

"The Established Church in Wales, being a short account of its origin, its development and its maturity." By J. H. SLATER. London: THE ANTI-LIBERATION SOCIETY, 47, Essex Street, Strand. In these days when the forces of Atheism, destructive Radicalism, and political Nonconformity are

combined for an attack on the most ancient outpost of Church Establishment, and Parliament is about to be asked to engage in the unrighteous work of pilfering and pillaging the Church property, and the secularisation of dedicated gifts, any clear and concise account of the origin and development of the National Church in Wales will be especially useful. In this volume Mr. SLATER deals in an intelligent and impartial manner with the historical position of the Church in Wales, and in the most unanswerable manner exposes the absurdities and misrepresentations of those who for purely selfish purposes repeat this stale and oft-refuted fallacy embodied in the glib catch word, "an alien Church." The enemies of the Church in Wales, are masters of many arguments, but of few proofs, and as might be expected, their misrepresentations, so persistently and so aggressively spread abroad, are oftentimes believed by those who have not the time or the ability to examine the real facts and so discover the hollowness of their inventions. The opening chapter is devoted to the establishment of the Christian Church in Wales before the time of the Diocletian persecution, showing clearly that it was not distinct from, but part of the British Church, as it is in fact, and as the Prime Minister yet affirms an integral part of the English Church now. This is followed by others on the development of Christianity, the Church not alien, the Reformation, the rise of Nonconformity, and Nonconformists in Wales, with a chapter on the present position of the Church in Wales, embodying some useful statistics and a record of Church work in the several dioceses of St. Asaph, Bangor, Llandaff and St. David's, showing the great increase and stability of the Church in those dioceses. We give a hearty commendation to Mr. SLATER'S book and recommend its perusal to Churchmen and Liberationists alike."—*Manchester Courier.*

"THE ESTABLISHED CHURCH IN WALES, ANTI-LIBERATION SOCIETY, 47, Essex Street, Strand, London, W.C. In this small volume we have Church history in a nutshell. It is a volume that should be in the hands of all opposed to the Welsh Suspensory Bill, and would be profitable reading to those in favour of it. Tersely and interestingly the history of the Church is traced from the dark ages before the landing of the Saxons on these shores to the present period. Mr. SLATER endeavours to prove the great injustice of the Welsh Suspensory Bill, and the reasons put forward by its promoters are analysed and criticised in a manner which will cause the hearts of those opposed to it to exult, and will doubtless surprise the most ardent of its supporters."—*The Library Review.*

"THE ANTI-LIBERATION SOCIETY of 47, Essex Street, Strand, is just now showing great activity. Their recently issued "Church in Wales," which was specially written for them by Mr. J. H. Slater, a well-know writer on bibliographical and other literary subjects, was distributed broadcast, and the Society claim that this publication proved a very powerful factor in opposition to the recent abortive attack on the Welsh Establishment. They have just concluded arrangements with the same author for a legal, historical, and ethical defence of tithe and landed property, which they intend to publish shortly under the title of "God and our Right." The Anti-Liberation Society owes its success, partly at least, to the fact that none of its officers are salaried, and that the whole of its revenue is spent in first-class literature and popular addresses to the working classes. In our columns will be found a report of the Society's Annual Meeting, which was held a few evenings since at Anderton's Hotel."—*The Mercury, March 10th, 1894.*

distributing leaflets among the working classes, exposing the pious pretence under which the work of trying to plunder the Church of England is carried on. But this effort means the expenditure of much money, and those Churchmen who desire to defend their Church will do well to help the Society with donations, which may be sent to the address given."—*Birkenhead Advertiser.*

"Some excellent new leaflets have just been issued by the Society."—*Church Bells.*

One of the Deans in sending a second contribution observes :—"Although the demands upon me are far greater than I can meet as I should wish, I cannot refuse to send you another small offering to testify my sense of the importance of the great effort which you are making in defence of our dear National Church, with my earnest hope that God's effectual blessing may rest upon your labours."

A Clergyman writes :—"Will you send me some fresh leaflets, etc., for distribution? The last I received did much good—so much that we have not had an invasion from the Liberationists since."

An ex M.P. for Wales says :—"I consider that your Society is doing excellent work. I have much pleasure in sending you a second donation."

Writing from Wales, a Clergyman says :—I should feel very deeply thankful if you would kindly favour me with a grant of pamphlets, etc., for parochial distribution, viz., Nos. 1, 7, 13, 17, 18, 21, 22, 23." (No application from poor districts has ever been refused since the institution of the Society in 1877.)

Another Clergyman writes :—I thank you much for the papers; you seem to be doing a most excellent work."

A Curate writes :—"Having seen two of your leaflets, will you kindly forward some to me in order that I may throw them into the enemy's camp. This would be of special assistance to me and a great boon."

The following were received from three important parishes :—

"Will you pardon me for taking the liberty to ask you to present me with a parcel of leaflets for distribution among the working-men of my parish."

"If you could see your way to send me a supply of Anti-Liberation Tracts for this large and poor parish. I should feel very thankful."

"Ours is a very poor back country parish. Would you give us a grant of some of your admirable leaflets? The Welsh Tithe Agitation is spreading over here, and the local papers are busy stirring against the Church."

The Rev. E. H. Perowde. D. D., writing from the Master's Lodge, Corpus Christi College, Cambridge, says :—"'The Established Church in Wales,' &c., is a clear and interesting statement of the position and rights of the Welsh Dioceses of the National Church, and *its wide circulation* is likely to do good by enlightening Churchmen and refuting Liberationists."

SPECIAL APPEAL.

NOW IS THE CRISIS OF OPPORTUNITY! We have at the present moment a priceless interval, which, once lost, may never be recovered. In order to carry on and extend the good work of the Society, the Administrative Committee desire to raise at least £2,000. Subscriptions and Donations should be made payable to H. W. L. GRANT, Esq., and crossed "London and Midland Bank."

G. R. P. COLLES, LL.D., Treasurer and Chairman of the Administrative Committee.
H. W. L. GRANT, Hon. Secretary.

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