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THE
GREAT HALE TITHE CASE,

PETCHEL

V.

THE HON. & REV. F. SUGDEN,

TRIED IN THE COURT OF COMMON PLEAS,

WESTMINSTER HALL,

ON TUESDAY, JUNE 19, 1860,

BEFORE CHIEF JUSTICE ERLE,

AND A SPECIAL JURY.

"Magna est Veritas et prevalebit."

PRINTED AND SOLD BY WILLIAM FAWCETT, BOOKSELLER,
MARKET-PLACE, SLEAFORD.

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1860.

IN THE COMMON PLEAS.

BETWEEN { WILLIAM PETCHEL, *Plaintiff*
AND
THE HONORABLE and REVEREND
FRANK SUGDEN, *Defendant*

Middlesex Sittings after Trinity Term, 1860.

SPECIAL JURY.

BRIEF FOR THE PLAINTIFF.

Pleadings stated.

* * * * *

CASE.

THIS Action is brought to try the right to the Tithes of Lamb and Wool in the Parish of Hale in Lincolnshire, *i.e.*, whether the same belong to the Rectory or to the Vicarage. In early times the parish was called Hale Magna, and comprised, as it does now, the townships of Great Hale and Little Hale.

The Living of Hale is a discharged Vicarage in the patronage of the Crown.

The Improprate Rectory of Hale formerly belonged to the Abbey of Bardney: it comprised the whole Parish, but in after years became divided by Grantees from the Crown, into what was

termed the Rectory of Great Hale, and the Rectory of Little Hale. Geo. B. Farrant, Esq., is the present Lay-Impropriator of Great Hale, and M. P. Moore, Esq., of Little Hale.

The united Parish comprises rather more than 6000 acres. The principal Proprietors are :

The Marquis of Bristol, Lord of the Manor of Little Hale.	
Charles Packe, Esqr., M.P.,	} Joint Lords of Great Hale.
George Hussey Packe, Esqr., M.P.,	
William Parker, Esqr., owner of the Abbey Parks.	
Sir Claude Ed. Scott, Bart.	

And there are about 80 other Proprietors.

The Plaintiff, Mr. William Petchel, occupies a Farm under Sir Claude Scott, in Great Hale. The Vicar having distrained for the Tithe on Mr. Petchel, he brings this action in replevin, on behalf of the Landowners generally.

The present Vicar, the Hon. and Rev. Frank Sugden, a son of Lord St. Leonards, was presented by the Crown in 1858. His predecessor, the Rev. Richard Bingham, had held the living for the long period of 62 years, from 1796 to 1858. Mr. Bingham resided chiefly on another benefice, Gosport, in Hants.; he was also a prebend of Chichester; a man of very uncommon sagacity. He had the misfortune to involve himself in law suits, debts, and difficulty, for the greater portion of his long life.

With him originated, in 1812, this claim to the Tithe of Lamb and Wool, as part of the endowment of the Vicarage; and from that time to the present the demand has led to constant litigation. In 1813 the Vicar filed a Bill, "*Bingham v. Everard, &c.*," against certain occupiers, to determine an old Tithe Composition of three ha'pence an acre, and to have all the small Tithes, including the Tithe of Lamb and Wool, set out in kind. Hale was a primitive Fen Parish, and it appears that these defendants were no match for Mr. Bingham. They were *virtually undefended*. They took no steps to ascertain the merits of the case; they made no searches in the Public Record Offices or elsewhere; they did not even resort to the Registry of their own Diocese, but accepted a thing, of the date circa 1204, picked out and propounded by Mr. Bingham as the endowment of his Vicarage, to be the true and bonâ-fide endowment of the Vicarage then existing; and the only defence they made was, that their Parish had been enclosed under a Chancery Decree in 1699, allotting certain lands to the Vicar in lieu of his Tithes, to which the Parishioners in 1707 had added an additional

composition of $1\frac{1}{3}$ d. per acre, and they contended that the Vicar ought to be held bound by his long acceptance of those allotments and the composition.

It is almost incredible that the Landowners should not have searched the Records of their own Diocese. They were diverted from making the search by the following *ruse de guerre*:—Mr. Bingham, who searched for himself, readily found both the right endowment and the wrong one, for they are indexed together in the old Calendar of the Registry. He brought away the wrong endowment, as it served his purpose best, explained to his Parishioners that the discovery was the result of a “*laborious and expensive search*,” and, as he was desirous of saving them an unnecessary expense, he would present them with a duplicate certified copy. In this manner, and by frequently repeating the same civility, (*Timeo Danaos et dona ferentes*), he absolutely deluded them from making any search whatever on their own account until the summer of last year!

It is needless to say that such a defence as these gentlemen made, availed them nothing. The Vicar of course obtained a Decree, in 1817, for all that he claimed, and the unfortunate Parish was suddenly fleeced (for wool, &c., and arrears) to the extent of £5250; and Mr. Bingham commenced to demand and receive £1258 annually, according to his own affidavit.

Smarting under this exaction, the Landowners began to make some enquiry into the subject. The first to take the matter up was Sir George Farrant, the then Lay Rector of Great Hale; and his searches, which were confined to the Public Record Offices in London, led to the sufficient legal presumption that the first Vicarage of Hale must have been dissolved (as it might legally have been prior to the statute of Richard 2nd), and a new Vicarage at some subsequent period created; and that such second Vicarage could not have been endowed with the tithes of Lamb and Wool. The evidences discovered were of a documentary nature, and for the most part of a period subsequent to the Reformation, including the *Valor Ecclesiasticus*, the *Ministers' Accounts* from Henry the 8th to James 1st, and so on; and these were alone considered to establish a case in favor of the Rector, much stronger than that set up by the Vicar in the suit of 1813, which rested on what he called the Endowment of 1204, giving “*all small Tithes*,” and two *Terriers* of 1690 and 1707. It is remarkable that Sir George Farrant did not search the Lincoln Registry, which would have given him the whole history,—How that the first Vicarage was dissolved in

1296 and consolidated with the Rectory, How that the church remained a Rectory for 50 years, was then appropriated to Bardney Abbey on condition of a new Vicarage being created, How that a new Vicarage was accordingly created and endowed in 1346, and that such new Endowment not only did not give the Lamb and Wool Tithe to the Vicar, but expressly reserved it to the Rector; and that such Endowment exactly agreed with the Terriers in 1612 and 1707. However, Sir George Farrant, claiming to be Lay-Rector, was content with the evidences which he had discovered, and proceeded to file his Bill, in 1819 "*Farrant v. Bingham & Fountain*," the defendants being the Vicar, and an Occupier, to establish the Lamb and Wool Tithe as part of the Lay Rectory. The object of Sir George Farrant, whose predecessor as Lay Rector had been a party to the inclosure of 1699, was not to claim the Lamb and Wool Tithe for himself, as the then supposed Lay Rector, but, being a considerable Landowner in the Parish, his object was to relieve the lands from that erroneous portion of the Vicar's Decree of 1817.

Sir George Farrant however failed in the form of his suit; for, obviously, so long as the Lay Rector continued to hold the Allotments, and the Composition for old Inclosure, awarded to him at the Inclosure in 1699 in lieu of all his rights, he could claim nothing further, the Inclosure Decree being binding upon him though not binding on the Church; Further, he could only make a Title to a *portion* of the Rectory, that is to say, to a moiety of the Rectory, somebody else being Rector of Little Hale; and it being necessary, as was contended by the defendants, that both Rectors should unite together to constitute the Rector of Hale. [Herewith, is Mr. Heald's Brief *for the defendants* on that occasion.]

The merits of the case never really came in question, under the form of this suit and judgment.

The next effort which the Landowners made to reverse the Decree of 1817, and to recover back the large sums which the Vicar had received under it, was in the year 1821, immediately after the judgment on the Lay Impropiator's suit. The Landowners in that year, through an Occupier, Sir George Farrant's tenant, Dawson, petitioned the Vice-Chancellor for a review of the Vicar's suit, on the ground of the fresh Evidences discovered, (documentary evidences from the Public Record Offices), but the petition was dismissed on the ground that the Landowners had not used due diligence in making their searches at the proper time. From the Vice-Chancellor the Occupier appealed to the Lord Chancellor Eldon. His Lordship confirmed the judgment of the Vice Chancellor, and

upon the same grounds, as will be seen by the report of the case "*Dawson v. Bingham*, Jacob's Reports, 1821," the merits of the case never coming in question.

Foiled in these attempts to reverse the Decree of 1817, the Landowners abandoned the hope of recovering back what they had lost, and resolved for the future to refuse payment of the Tithe of Lamb and Wool, and to leave the Vicar to try the right again if he thought fit so to do; and for the last thirty years and upwards down to the present time, the Tithe has never been paid in the Parish; this at least is a fair general representation of the fact of non-payment. The dismissal of the Petition of Dawson was in 1821. It was not until 1823 or 1824 that the Occupiers generally became acquainted with the facts of the case as discovered by Sir George Farrant, and having paid generally up to that time, they then began to refuse the payment, with a view to having the question fairly tried over again. In 1823 the Landowners generally began to take advice on the merits of the case, as furnished to them by Sir George Farrant's Lawyers, and on that evidence the late Sir Charles Wetherall and other eminent Counsel, advised them to resist the payment. It was not, however, until about 1827, that the resistance became *universal*, for most of the Occupiers had become terrified and exhausted by the successive suits and costs: for not only had they suffered in those suits and costs, and in the enormous sums recovered by Mr. Bingham for Tithes, but it happened that he (Mr. Bingham) before the Decree of 1817 (on his Bill of 1813) had mortgaged the Living to another Clergyman, who gave notice to the Occupiers thereof; and whilst the perplexed Occupiers were hesitating to whom to pay their Tithe, Mr. Bingham, in 1819, filed 12 Bills in Chancery, and brought as many actions at law, against those Occupiers, requiring them to pay their Tithe to him and not to his Mortgagee; and the unfortunate occupiers had to pay the Costs of answering those Bills in Chancery and preparing Briefs for their defence at Lincoln Assizes. Thus they were mulcted in the costs of 14 or 15 Chancery Suits, and as many Actions at Law, without ever once having been able to get their case fairly before the Court.

However, before 1827 the Occupiers had all again summoned courage to refuse the demand, and to leave the Vicar to prove his case, on its merits; save and except that a few small occupiers and persons with whom the Vicar had influence, continued to pay Tithe under composition agreements, which the Vicar drew up and got signed, (giving no copies), and which agreements may or may not have been so worded as to cover Lamb and Wool.

Mr. Bingham frequently threatened a fresh suit, and in 1830, and again in 1844, did actually file fresh Bills against certain occupiers; but although the stake was of such magnitude, and so tempting if the claim were just, yet neither he, nor his creditors under the sequestration, nor his unpaid solicitors, could ever be induced to risk the bringing of his new suits to a hearing.

In 1843 the Parish of Hale came in rotation under the Tithe Commissioners, for a Rent-charge to be awarded in lieu of Tithes, and the Landowners then urgently pressed the Assistant Commissioner to hear and determine the then pending suits of 1830 and 1844. But the Assistant Commissioner, intimating that he had hit upon a plan of framing his Award "so as not to prejudice the rights of either party," proceeded to ascertain the value separately of the Lamb and Wool Tithe in dispute, (£360 per annum), and then awarded that sum "*to the Vicar for the time being, or party lawfully entitled to the same,*" thus leaving the question just where it stood.

The Award also gave to the different Landowners £1187 per annum for their Rectorial Tithes, (the Inclosure of 1699 having operated to transfer the Rectorial Tithes to the Landowners), and £450 to the Vicar for his Tithes undisputed.

Before this Award was confirmed, the Landowners twice attempted, in 1849 and 1852, by Mandamus, to compel the Commissioners to hear and determine the matters in difference, but the Commissioners successfully resisted each Mandamus; they were not a judicial body, and were supported by the Court in avoiding all questions of title, when such questions did not positively hinder the making of the Award. (Vide both cases reported.)

The late Vicar, Mr. Bingham, never ventured to claim the £360 set out by the Tithe Award, but Mr. Sugden, soon after his institution to the Living, intimated his intention to try this right, and accordingly distrained on the Plaintiff.

Before proceeding to distrain, Mr. Sugden circulated amongst the Landowners "A Statement of the Facts regarding the Vicarage of Great Hale," (evidently drawn up by a master hand,) purporting to be a *resumé* of the law proceedings since 1812; in which statement the Author treats the Tithe Commutation Award as having established the £360 per annum for Lamb and Wool Tithe as a "fixed perpetual payment," and that "the only question was to whom must it be paid; a question between the Lay Impropriators and Vicar." The decisions and judgments in all the Courts were

then commented on, and it was contended that those decisions established, "not simply that the Vicar was entitled to Lamb and Wool Tithe, but, upon the Impropiator's own Bill, that he was not entitled to those Tithes, &c., &c." (Vide the Statement and marginal notes thereon, *post*.)

If the Landowners could shew no better case than the one Mr. Sugden published for them, it is not surprising that he (Mr. Sugden) was advised to embark in this Suit; but it is known to the Landowners that the Defendant, only of late, and since the commencement of this Action, became acquainted with some of the material evidences that confirm the Rectorial title to these Tithes. Mr. Sugden was not the man to involve his parishioners in a Law-suit on doubtful grounds; it is believed that he was as much misled by his predecessor as the Landowners were in former times.

This printed statement issued by Mr. Sugden, necessitated the publication of a counter statement; and although the latter, openly disclosing the Landowners' case, has been freely circulated amongst them, yet, it is believed that every gentleman has carefully treated the same as a confidential communication, and that it remains wholly unknown to their opponent. Mr. Hewlet, however, the great searcher of antient records, has been down, with his staff, at Lincoln, and doubtless may have found something.

The importance of the question now at stake, is estimated at £20,000, in fee-simple value, costs, and arrears.

Before proceeding to examine the evidences for the Plaintiff, we must premise that the Defendant will rest his case on the Endowment of 1204, the Terriers of 1690, and 1707, the Decree in the Vicar's favor of 1817, perception under that Decree, the dismissal of the Lay Rector's Bill in 1821, and the two unsuccessful petitions by Mr. Dawson in 1821, to obtain a review of the Decree of 1817; and the combined effect of the whole. He will also endeavour to make much of the form of the Tithe Commutation Award.

The "Endowment" of 1204, is as follows, and it is obtained from an antient Roll in the Lincoln registry, of the time of Bishop Oliver Sutton, who presided over the diocese from 1280 to 1300. It is not the original endowment itself, but only a memorandum of the endowment, subjoined to the institution of a Vicar in 1280; it bears no date, but refers to some endowment as of the time of "Bishop William" (de Blois), whose episcopate ruled from 1203 to 1206.

Institution
of a Vicar,
A.D. 1280.

INSTITUTION, &c.

TRANSLATION.

"VICARIA DE HAL.

VICARAGE OF HALE.

"*Willielmus de Hale capellanus presentatus per magistrum Nicolaum de sancto Quintino rectorem ecclesie de Hale, de consensu expresso abbatis et conventus de Bardenay patronorum ejusdem, ad vicariam ecclesie de Hale ex diu vacantem; facta prius inquisitione per W. Archidiaconum Lincolnensem, per quem acceptum est &c.; Ad dictam vicariam est admissus tertio Idus Octobris anno primo apud Lafford, et cum onere personaliter ministrandi vicarius perpetuus institutus: Juraque domino episcopo canonica obedientia et corporali residentia scriptum fuit dicto Archidiacono quod ipsum &c. Consistit autem dicta vicaria in toto Altaragio secundem ordinationem Willielmi episcopi coram domino episcopo exhibitam; videlicet in omnibus oblationibus et minutis decimis cum tofto quod fuit Godwin Grikke, et cum terra pertinente ad ecclesiam, excepto tofto quod fuit Radulphi Pilat juxta ecclesiam ex parte aquilonari et excepto loco in marisco de Hale qui dicitur Parcus. Et vicarius de episcopalibus consuetudinibus respondebit.*

Endowment
Circa 1204.

William de Hale Chaplain presented by Master Nicholas de St. Quintin rector of the church of Hale by express consent of the Abbot and Convent of Bardenay patrons of the same, to the vicarage of the church of Hale for a long time vacant, Inquisition having been first made by W. Archdeacon of Lincoln, by whom was accepted &c., was admitted to the said vicarage the 3rd of the Ides of October in the 1st year, at Lafford, and instituted perpetual vicar with the burden of personally ministering: And canonical obedience to the Lord Bishop being sworn, and corporal residence, it was written to the said Archdeacon that he &c. The said vicarage consists in the whole altarage, according to ordination of Bishop William exhibited to the Lord Bishop, namely, in all oblations and small tithes, with the Toft which was Godwin Grikke's, and with the land belonging to the church, except the Toft which was Ralph Pilat's, near the church on the north side, and except in the place in Hale Fen which is called the Park; and the vicar shall be responsible for episcopal customs.

The Plaintiff's case will be, to knock up this endowment of 1204, and to establish another of the date 1346; which object, it is believed, the following evidences will accomplish:

PLAINTIFF'S EVIDENCES, &c.

A.D. 1291.
Pope
Nicholas,
No. 1.

POPE NICHOLAS' TAXATION of Churches, made in the Year 1291, will be found to contain the following entry concerning Hale :—

“Lincoln Spiritualities.

“Deanery of Lafford.

“The Church of Hale 54 Marks.

“Pension of the Abbott of Bardney 1 Mark.

“The Vicarage of the same, 15 Marks.

N.B.—*This shews the Value of the Rectory and Vicarage separately; before they were consolidated.*

Early
Bishops of
Lincoln.

LIST of the EARLY BISHOPS of Lincoln whose Records are still preserved; and the dates of their accession:—

	Accession.		Accession.
Hugh Wells	1209	John Dalderby	1300
Robert Grosthead	1235	Henry Burghersh	1320
Henry Lexington	1254	Thomas Beck	1342
Richard Gravesend	1258	John Gynwell	1347
Oliver Sutton	1280	John Buckingham	1363

The nature
of their
Records.

The Rev. James F. Dimock, of St. John's College, Cam. (Wrangler), Minor Canon of Southwell, has devoted many years to the study of antient records, is well acquainted with the early records in the Lincoln Registry, and will prove the general nature of the same to be as follows :—

The Institutions and other Episcopal Instruments of the Bishops of Lincoln before the time of Oliver Sutton, are recorded in Rolls, (the same being strips of parchment stitched together and formed into very long Rolls), the entries therein being made apparently *de die in diem*, by the Registrar: there being in the time of each Bishop a separate Roll for each of the Archdeaconries in the Diocese. This is also the case in the first 10 years of Oliver Sutton's Episcopate, 1280 to 1290:—In the remainder of Bishop Sutton's Episcopate, and through all succeeding Episcopates, all such Instruments are registered in Folio Volumes.

Of the time of Bishop Wells there exists, besides the Rolls, a Book called "*Liber Welles*," in which are entered Memoranda, and Abstracts of Documents, taken more or less fully. This book appears to have been made out and copied all at one time, and not a Register *de die in diem*. This book has been rejected as inadmissible in evidence, although not unfrequently admitted:—but it is of a different nature altogether to the Rolls and Registers, which are the daily record of the Deeds and Instruments issuing from the Bishop's Court, and his check on the Monks and Clergy : and therefore admissible as the best evidence of the facts.

Bishop Oliver Sutton's Volume, (not the Roll), recording his Institutions, &c., commences with the eleventh year of his Episcopate, viz, 14 kal., June, A.D. 1290, and ends, 17 kal., Nov., 1299. The Volume contains Institutions and other instruments relating to benefices during that period, being the original daily record of such instruments issuing out of the Bishop's Court. The several Archdeaconries are arranged separately, but are all included in the same book. Bound up with this Book, is a separate and distinct volume containing the *Memorandums*, so called, of Bishop Sutton, consisting of abstracts, or copies, of various other episcopal instruments. Each Bishop had his Memoranda, quite distinct from the record of his institutions, &c., and in every episcopate, (save this of Bishop Sutton), the Memoranda form a distinct Volume.

This Book of Institutions of Oliver Sutton, contains a Document, called in the antient Calendar, "*Consolidacio Vicarie de Hale Rectorie ejusdem*."*

The following is a Translation of it ;

A.D. 1296.
Consolidation of the
Vicariate of
Hale with
the
Rectorie.
No. 2.

" *IN THE NAME OF GOD, Amen.*—*Our beloved son in*
" *Christ William de Riby, Priest, Rector of the Parish Church of*
" *Hale, of the Advowson of the Monastery of Bardeneye, appearing*
" *before us, Oliver by Divine permission Bishop of Lincoln, Robert,*
" *Abbot of the same place being then present and in like manner*
" *urgent for this, earnestly required of us that the provision assigned*
" *for the support of Vicars existing in the same Church in time*
" *past, of which a portion or vicarage, by reason of William de Hale the last*
" *Vicar of the abovesaid Church having been admitted by Title of Institution*
" *to the Parish Church of Folkingham, was then in right and fact notoriously*
" *vacant, might by our provident care be consolidated to the Rectorie of the*

* It is a curious fact that Mr. Hewlett having noticed this Document in the Calendar, Temp. Hen. 7th., looked for it in the folio of Sutton's Memoranda instead of the folio of his Institutions, not imagining that two Books were bound up in the same cover, and so, not finding the instrument there, he missed it altogether.

“ same Church of Hale, and it restored to its integrity ; especially as the said
 “ William offers himself prepared to reside personally in the same Church and
 “ to take upon himself in person the cure of the same committed to him : In
 “ truth after long deliberation upon the said Petition we have thought good
 “ that the reasons which seemed to support or oppose the same Petition should
 “ be weighed with extreme nicety : At length, although we find that many
 “ Vicars have been instituted in successive times in the said church of Hale,
 “ and with another Chaplain their companion, have personally ministered
 “ therein from times very far back, the Rector of the same nevertheless being
 “ resident there, yet inasmuch as we consider that favorable attention ought to
 “ be given to the restoring of Churches to their integrity when any Section or
 “ Division of them has been substracted, where this can be done without preju-
 “ dice to any one, and so long as the Divine Worship be in no way diminished ;
 “ We Decree that the aforesaid Church of Hale shall be governed by its
 “ Rector without a Vicar instituted there, on condition that there be for the
 “ future two Chaplains, continually ministering therein, especially as its
 “ means are sufficient for this and the ample extent of the parish demands it ;
 “ Firmly enjoining the aforesaid Rector under pain of canonical distrain-
 “ t, that he keep personal residence in the same Church, under pain of Law, and
 “ find the said Chaplains, forasmuch as he is not sufficient for ministering in
 “ a fitting manner in his own person, in case of ill health proving an obstacle ;
 “ and do competent almsgiving by reason of this restoration, to the poor of
 “ the said Parish.

“ These things were done at Bukeden on the 11th of the Kalends of De-
 “ cember, A.D., 1296.

“ And it was written to the Official of the Archdeacon of Lincoln under
 “ date of the 10th of the Kalends of December in the abovesaid year at Buke-
 “ den, that from henceforward he should freely permit the aforesaid Rector to
 “ receive the fruits and profits of the said Church in their integrity, and
 “ should publish the premises in the said Church of Hale and in other places
 “ in which he thought it expedient.”

N.B.—By this Act of Union, and there are
 many instruments of the kind in
 the Lincoln Registry of that period,
 the Vicarage of 1204 was dissolved.
 The Documents next following are in
 confirmation of that fact.

A.D. 1304.
 Institution
 of a
 Rector.
 No. 3.

From BISHOP DALDERBY'S RECORDS, will be
 produced, by Mr. Swan, the Registrar, the Institution of
 Robert de Askeby, Priest, to the Rector of Hale Magna,
 on the death of William de Riby, “ *ultimi Rectoris ejusdem*,”
 presented by the King, “ *ratione temporalium abbacie de Bardney*
 “ *que tempore presentationis hujus in manu suâ extiterunt.*”

A.D. 1331.
Institution
of
Rector.
No. 4.

From BISHOP BURGHERSH'S RECORDS will be produced the Institution of Ralph de Luceby, as *Rector*, presented by the Abbot and Convent of Bardney, on the death of Elias de Whetely the last Rector.

No Vicars
from 1296
to 1346.

The Rev. J. DIMOCK will prove, that he has carefully searched the Lincoln Registry from 1296, when the first Vicarage was dissolved, to 1346, when the second Vicarage was created, and that he finds no institutions of Vicars in that period, but institutions of Rectors and of Rectors only.

A.D. 1337.
Chantry of
St. Cath-
erine.
No. 5.

From BISHOP BURGHERSH'S RECORDS will be produced, the Deed of Foundation by Hugh de Whetely, of a Chantry at Hale, for the soul of his brother Elias de Whetely, late Rector, (*Vide Appendix*), in which deed the Founder directs, amongst other things, that the Chaplain of this Chantry shall render assistance to the Rector of the Church of Hale, and to "*the Vicar of the same if any there shall be in future time,*" (*seu vicario ejusdem si quis fuerit in futurum*).

This further confirms the fact of there being no Vicarage existing at that time.

A.D. 1345
18 Ed. 111.
Inquisition
ad quod
damnum.
No. 6.

From the PUBLIC RECORD OFFICE, London, will be produced by Chas. Devon, Esq., searcher of Antient Records, the examined copy of an *Inquisition ad quod damnum*, prior to the appropriation of the Rectory of Hale to the Monastery of Bardney. This Inquisition was held at Sleaford, November 1345; the following is a translation of it:—

"*Inquisition taken before Saiers de Rocheford, Escheator of the Lord the King in the County of Lincoln, at Sleford, upon Wednesday next before the Feast of Saint Martin, in winter, in the 18th year of the Reign of King Edward the 3rd after the conquest of England, but in the 5th year of his Reign of France, if it would be to the damage or prejudice of the Lord the King, or of others, if the Lord the King should grant to his beloved in Christ the Abbot and Convent of Bardney, that they might appropriate the Churches of Hale and Hekyngton which are of their own advowson, as is said, and might hold the same to their own use, to them and their successors for ever, or not, and if it should be to the damage or prejudice of the Lord the King or of other persons, then to what damage and what*

“prejudice of the Lord the King, and to what damage and what prejudice of
 “others, and of whom and how and in what way, and how much each of the
 “Churches aforesaid is worth yearly in all issues, according to the true value
 “of the same, according to the tenure of the writ of the Lord the King
 “thereupon directed to the said Escheator, by the oath of John de Tothill of
 “Silkeby, William de Burton of Hale, John de Folkyngham of the same
 “place, Alan Bryan of the same place, John the son of William of the same
 “place, John the son of John de la More of Asgerby, Thomas Clement of
 “Hale, John the son of Richard de la More of Asgerby, Thomas Ingleys of
 “Hekyngton, Robert de Crokton of the same place, and Robert de Folkyngham
 “of Hale; who say upon their oath, that it is not to the damage nor prejudice
 “of the Lord the King, nor of any other person, if the Lord the King should
 “grant to his beloved in Christ, the Abbot and Convent of Bardney, that
 “they might appropriate the Churches of Hale and Hekyngton aforesaid, and
 “hold the same to their own use, to them and their successors for ever, except
 “only during the time of the vacancy of the Abbey of Bardney the same then
 “being in the hands of the Lord the King with the Churches aforesaid, which
 “then being void will belong to the Lord the King to present to the same, and
 “they say that the Churches of Hale and Hekyngton aforesaid are of the
 “advowson of the Abbot and Convent of Bardenay aforesaid, also they say
 “that the Church of Hale aforesaid is worth yearly sixty and ten marks
 “only, in all issues, according to the true value thereof, and that the Church
 “of Hekyngton aforesaid is worth yearly fifty marks only, in all issues
 “according to the true value thereof. In witness whereof to this Inquisition
 “the aforesaid Jurors have put their seals. Dated the day year and place
 “aforesaid.

Referring back to the Taxation of Pope Nicholas in 1291, it will be seen that the present return of Value in 1345, shewed the Rectory and Vicarage to be united and consolidated, as under the Deed of 1296.

A.D. 1345.
 18 Ed. III.
 No. 7.

From the PUBLIC RECORD OFFICE, the Engagement of the Abbot of Bardney to pay a Fine of 100 marks, for the King's License to appropriate the Churches of Hale and Hekyngton to the Monastery of Bardney.

A.D. 1345.
 18 Ed. III.
 No. 8.

From the PUBLIC RECORD OFFICE, the License of King Edward III, for the above appropriation, at the request of Eleanor de Beaumont.—“Witness the King at Melford, &c.”

A.D. 1345-6
Appropriation to
Bardney.
No. 9.

From BISHOP THOMAS BECK's RECORDS, in the Lincoln Registry, will be produced *the Deed of Appropriation* of the Churches of Hale and Heckington, to the Monastery of Bardney, of which the following is an abstract :

"THOMAS, by Divine permission, Bishop, &c.

"A Petition addressed to the Bishop from the Abbot and Convent of Bardney sets forth as follows ;

"That Pope Clement 5th, of happy memory, formerly granted to them to their own uses, the Parish Churches of Hale and Heckington : and empowered them to enter at once upon those Churches when vacant, without the Bishop's assent being required, assigning certain portions for support of Vicars.

"That the Letters of Pope Clement 5th to this effect having been lost, Pope Clement 6th had now ratified the Grant of his Predecessor.

"Whereupon the said Abbot and Convent humbly supplicated of the Bishop to give his assent also : and submit themselves to his pleasure as to the recompense to be made to him for the loss of profit and honour which he would incur from the said Appropriations.

"The Bishop is pleased to grant his assent, upon sufficient recompense being insured for the Episcopal damages, and thereupon approves, ratifies, gives his express consent, and imparts Pontifical authority to the said Papal Grant, reserving however to the Bishop and his successors *the power of assigning proper portions out of the Churches, for the Vicars who would have to be instituted therein, and of determining in what the portions to such Vicars ought to consist.*

"Dated at Bukeden, March 6, A.D. 1345,6—Indiction XIII—4th of Pontificate of Clement 6th, in presence of Master William De Burton, Sir Nichs. de Denton, and Wm. de Saundeby, Clerks.

"The Public Instrument expressing the above, drawn up by William Aleyn, surnamed de Rothwell, Public Notary, who with the said witnesses was present during the whole process."

N.B.—*It will be seen that this Appropriation required Vicarages to be created and endowed at Hale, and Heckington.*

Pope Clement 5th, commenced his Pontificate in 1305 and ended in 1316 : Thus they were agitating an appropriation and Vicarage at that time, which probably occasioned a future Vicar to be glanced at in the Chantry Deed of 1337.

A.D. 1345-6.
Assessment
of damages.
No. 10.

From the LINCOLN REGISTRY, Bishop Beck's Records, will be produced a Deed, dated 6th March, 1345-6, whereby the Bishop reserved to himself an annual pension of 10 marks, in recompense of the Episcopal damages resulting from the appropriation of the two Churches, viz., from Hale, 6 marks, and Heckington 4 marks.

A.D. 1345-6.
King's License.
No. 11.

From the PUBLIC RECORD OFFICE, the License of King Edward III, to the Abbot of BARDNEY, to amortise the above 10 marks pension.

A.D. 1346.
The Endowment of
the 2nd
Vicarage.
No. 12.

From BISHOP BECK'S RECORDS, Lincoln Registry, will be produced, the Deed of *Endowment of the second and present Vicarage of Hale*, dated 22nd November, 1346: and which was first discovered by the Landowners in 1859.

ORDINACIO VICARIE
ECCLESIE DE HALE.

ENDOWMENT OF THE VICARAGE
OF THE CHURCH OF HALE.

UNIVERSIS presentes literas inspecturis, Thomas permissione divina Lincoln Episcopus salutem in omnium Salvatore. NOVERITIS quod nos vicariam in ecclesia de Hale nostre diocesis fore decrevimus sub forma que sequitur ordinandam. IN PRIMIS ordinamus quod vicarius dicte ecclesie qui pro tempore fuerit habeat pro habitatione sua partem mansi Rectorie dicte ecclesie continentem in longitudine novem perticatas et dimidiam cujus finis australis continet in latitudine quinque perticatas et finis borealis quatuor perticatas et dimidiam; cujusmodi locum sic pro inhabitatione dicti vicarii ordinatum, religiosi viri abbas et conventus monasterii de Bardenaye

TO ALL who shall inspect these present letters, Thomas, by divine permission Bishop of Lincoln, health in the Saviour of all.

KNOW that we have decreed that there shall be a vicarage in the church of Hale of our diocese, to be ordained under the form which follows:

IN THE FIRST PLACE we ordain that the vicar of the said church for the time being shall have for his habitation part of the manse of the Rectory of the said church, containing in length nine perches and a half; of which the south end contains in width five perches, and the north end four perches and a half; which place, thus ordained for the habitation of the said Vicar, the religious men the abbot and convent of the monastery of Bardenaye of

dicte nostre diocesis, prefatam ecclesiam in usus proprios auctoritate apostolica obtinentes, in edificiis subscriptis competentibus suis sumptibus edificarifaciant adusum dicti vicarii prima vice, videlicet in aula, duabus cameris, coquina, pistrina, bracina, grangia, stabulo, et boveria, infra biennium a die confectionis presencium computandum sub pena viginti librarum applicandarum fabrice nostre Lincoln ecclesie, in quibus quidem viginti libris dicte fabrice persolvendis in casu quo domus prefate omnes et singule infra predictum terminum competenter edificate non fuerunt de consensu eorum per preceptisententiam condemnamus.

VOLUMUS eciam quod dictus Vicarius domos dicte Rectorie libere inhabitare valeat, quousque domus predicte ad usum suum edificande plene edificate fuerint ut prefertur. **ITEM** habeat dictus vicarius quatuor acras terre arabilis de terris ad dictam ecclesiam pertinentibus, videlicet in qualibet parte quatuor partium campi de Hale unam acram, cum ipsum campum in quatuor partes separetur. **HABEAT** insuper dictus Vicarius tres acras prati ad ipsam ecclesiam pertinentes, jacentes in pratis de Hale extra locum que vocatur parvus Rectoris: **QUE** quidem mansum terram et pratum habeat idem vicarius ab omni seculari servitio exactione et prestatione decimarum libera pariter et quieta: De suis eciam animalibus propriis, in predictis terra manso et prato cubantibus, et inibi ac alibi infra dictam parochiam depascentibus, vicarius predictus qui pro tempore fuerit dictis religiosis decimam solvere nullatenus teneatur, sed ea omnia et singula habeat idem vicarius absque deductione

our said diocese, obtaining by apostolical authority the aforesaid church to their own uses, shall cause to be built at their costs with the underwritten competent buildings, for the use of the said vicar, the first time; viz. with a hall, two chambers, a kitchen, a bakehouse, a brewhouse, a grange, a stable, and cowhouse; within two years, to be reckoned from the day of the making up of these presents, under pain of twenty pounds to be applied to the fabric of our church of Lincoln; To payment of which Twenty pounds to the said fabric, in case that all and singular the aforesaid houses shall not have been competently built within the aforesaid term, we, with their consent, condemn them by sentence of precept.

WE WILL, also, that the said Vicar shall be allowed freely to inhabit the houses of the said Rectory, until the houses aforesaid, to be built for his use, shall be fully built as is aforesaid.

ALSO, the said Vicar shall have four acres of arable land, of the lands pertaining to the said church; viz., in each part of the four parts of the Field of Hale one acre, since the field itself is separated into four parts.

MOREOVER, the said Vicar shall have three acres of meadow pertaining to the same church, lying in the meadows of Hale without the place which is called the Rector's Park.

WHICH manse, land, and meadow, the same Vicar shall have alike free and quiet from all secular service, exaction, and payment of tithes. Also of his own animals, lying in the aforesaid land manse and meadow, and feeding therein and elsewhere within the said parish, the aforesaid Vicar for the time being shall in no way be bound to pay tithe to the said Religious; but the same Vicar shall have all and singular of them, without any deduction whatever of tithes.

qualibet decimarum: ITEM habeat idem vicarius qui pro tempore fuerit mortuaria viva et mortua, ceram eciam tam in mortuorum exequiis quam aliunde ad dictam ecclesiam quomodolibet proventuram, NECNON omnes oblationes qualitercumque pertinentes ad dictam ecclesiam et proventus ad eam; Herbagium insuper cimiterii, decimas vitulorum, pullanorum, porcellorum, aucarum, pullorum, gallinarum, columbarum, ovorum, lactis, ortorum, gardinorum, lini, canabii, tritum molendinorum, apium, furnorum, lucri artificiorum aucupacionum et piscarie, ceragum, maynport, ac denarios sancti Petri, decimis garbarum de dictis ortis et gardinis provenientibus dumtaxat exceptis: DICTI autem religiosi habeant, nomine ecclesie sue predictae, omnes decimas garbarum, feni, lane et agnorum, terras predictas, redditus, ac omnia alia ad dictam ecclesiam pertinentia, dicto vicario superius minime assignata. ONERA vero extraordinaria eidem ecclesie incumbencia, necnon reparacionem et constructionem cancelli dicte ecclesie, refectorem eciam et invencionem librorum vasorum et ornamentorum ipsius ecclesie quotiens indiguerit, ac eciam solucionem procuracionis Archidiaconi, prefati religiosi subient imperpetuum et agnoscent: CETERA vero onera ordinaria incumbencia ecclesie supradicte agnoscat vicarius qui pro tempore fuerit in futurum. RURSUS si quid in hac ordinacione nostra obscurum ambiguum fuerit, seu eciam diminutum, illud interpretandi declarandi addendi et diminuendi facultatem nobis et successoribus nostris specialiter reservamus. In cuius rei testimonium sigillum nos-

ALSO the same Vicar for the time being shall have mortuaries, alive and dead: also the wax which shall come to the said church, as well in the exequies of the dead, as otherwise in any way whatever; LIKEWISE all oblations in whatever way pertaining to the said church and coming to it; Moreover the herbage of the churchyard; tithes of calves, foals, pigs, geese, pullets, hens, pigeons, eggs, milk, orchards, gardens, flax, hemp, the three mills, bees, ovens, the profit of trades, fowlings and fishing; cerage, maynport, and the pence of St. Peter; the tithes of garbs coming from the said orchards and gardens alone excepted.

AND the said Religious (i.e. the Rectors) shall have, in name of their church aforesaid, all tithes of garbs, hay, wool, and lambs; the lands aforesaid, rents, and all other things to the said church pertaining, to the said vicar in no wise assigned above.

BUT burdens extraordinary, incumbent on the same church, also the reparation and construction of the chancel of the said church, the repairing also and finding of books, vessels, and ornaments of the church, as often as it shall need them, and also the payment of the Archdeacon's Procuracion, the aforesaid Religious shall be subject to for ever and shall allow. BUT other ordinary burdens incumbent upon the abovesaid church the Vicar for the time being in future shall take upon himself.

AGAIN, if anything obscure in this our ordination shall be ambiguous, or also diminished, the power of interpreting, declaring, adding to and diminishing that, we specially reserve to ourselves and our successors.

In testimony of which thing our seal is appended to these presents.

trum presentibus est appensum. Dat' apud Nettelham X Kal Decembris Anno Domini Millesimo CCCmo XLVITO et consecrationis nostre quinto.

Dated at Nettelham the 10th of the Kalends of December, in the year of our Lord One thousand three hundred and forty-six, and of our consecration the fifth.

Counsel will please to note on this Endowment :

- 1.—The new Vicarage house to be built.
- 2.—Lands assigned in the Four Fields of Hale, agreeing with the Terriers before inclosure.
- 3.—Three acres in the district called the Park, recognised in the Terrier of 1612.
- 4.—The specification of the small Tithes to be taken by the Vicar, minutely agreeing with the Terrier of 1707.
- 5.—The express reservation of the Lamb and Wool Tithes to the Rector!

A.D. 1346.
Institution
of ye first
Vicar.
No. 13.

From BISHOP BECK'S INSTITUTIONS will be produced, the Institution of *the first Vicar*, in 1346. Robert Irnenside, priest, (who resigned the Chaplaincy to the Chauntry of St. Catherine), presented by Roger Abbot of Bardney and the Convent, to the Vicarage of the Church of Hale, *vacant and newly ordained*, ("*de novo ordinatam*.")

A.D. 1349.
Hekyngton
Endowt.
No. 14.

From BISHOP GINWELL'S INSTITUTIONS will be produced the Endowment of the Vicarage of ~~Hale~~, *Hekyngton* in 1349, reciting the Letters of Popes Clement the 5th and 6th, and shewing the complete fulfilment of the conditions of the Appropriation.

Vicars.
A.D. 1370
1386
1391
1392
1421
1465
1492
1508
1547
No. 15.

From the LINCOLN REGISTRY will be produced institutions of Priests to the Vicarage of Hale, of the dates in the margin, on presentation of the Abbot and Convent of Bardney until 1508, and in 1547 by Thomas Husse, Esq., "by reason of a Grant allowed to him for that time made by the late Abbot and Convent of the Dissolved Monastery of Bardney." And it will be proved that the Registry has been carefully searched, and that there are no

Institutions of Rectors, but Institutions of Vicars only, from the time of the second endowment in 1346, to the Dissolution of the Monastery, Temp. Hen. VIII.

Lincoln
Calendar,
Temp.
Hen. VII.
No. 16.

The Original CALENDAR, compiled in the time of Hen. 7th, of the early records in the Lincoln Episcopal Registry, contains the following entry concerning Hale:

HECKINGTON } "Ecclesiarum appriacio una cum assignatione
et } pensionum per indentate epi. In libro institurum
HALE. } Dm. Thome Beck, Fo. 19 et 20.

HALE. Vicar' prima ordinatio per Oliv. Sutton ut in rotulo suo de instit. anno ejusdem primo. Vicar' cum rectoria ibm consolidatio. In libro instit. ejusdem dm. Oliveri Sutton, fo. 29.

Vicar' secunda ordinatio in libro instit dm. Thome Beck, fo. 25.

This Index, ready to hand, will explain "the laborious and expensive search" in 1812, before mentioned, and how it was that the searcher having "at last discovered" the wrong Endowment, was unable to discover the right!

Valor
Ecclesiast-
icus.
A.D. 1536.
No. 17.

From the PUBLIC RECORD OFFICE, London, will be produced the *Ecclesiastical Survey*, formerly in the Office of First Fruits and Tenths, taken in pursuance of an Act of Parliament of the 26th Hen. 8th.

The Survey contains the following Valuation of the Rectory and Vicarage of Hale:—

"BARDNEY ABBEY."

Spiritualities.

"The Rectory of Hale, worth 14[£]

Temporalities.

"Hale Farm, (being the Parks) . . . £
4

<p>"Hale Vicarage, George Pyndar Vicar there, and hath to wit,</p>	}	<p>For a Manse with Land appertain- ing 10s. ; for oblations at the time of Easter, £4 ; for oblations on the four days, with minor oblations, £2 13s. 4d. ; for hens, 2s. ; for hemp and flax, 13s. 4d. ; for pigs and geese, 10s. In all by the book thereof shewn and examined, £8. 8s. 8d. Reprisals, 2s. 8d., et valet clare, &c., &c., &c."</p>	}	<p>£. s. d. 8 6 0</p>
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It will be observed that the Tithe of Lamb and Wool is not here included as belonging to the Vicarage. An examination of the general Survey will shew, that wherever a Vicarage was endowed with Lamb and Wool, it was so valued in the Survey, and was generally worth all the other small Tithes put together, and therefore not likely to be omitted.

Surrender
of the
Abbey,
30 Hen. 8th.
A.D. 1538.

At the general Dissolution of Monasteries, the Abbey of Bardney with its Lands and Possessions was surrendered to the King, 3rd Nov., 30th Hen. 8th., and the Crown thereupon became possessed of the Improprate Rectory of Hale, and the Advowson of the Vicarage of Hale.

Ministers'
Accounts,
30 Hen. 8th.
No. 18.

From the Public Record Office, and late of the Court of Augmentation, will be produced Documents called "*Ministers' Accounts*," being Surveys and Accounts of Improprate Rectories, and other property of the Crown : of which the following is an abstract concerning the Rectory of Hale, in the Survey of the year, 30 to 31st, Hen. 8th. :—

"Bailiwick of Hale, &c.

"The Account of Richard Bannister, Bailiff there.

"Farm of Rectories.

"£15 for the Farm of the Rectory of Hale, with all the houses

and demesnes within the said Rectory, and all the Tithes of Grain and Hay, and *Wool* and *Lambs* to the same pertaining; in lease to Leonard Markham."

Ministers' Accounts

33 Hen. 8th.
A.D. 1541.
No. 19.
8th Q. Elizabeth,
A.D. 1566.
No. 20.
26th Q. Elizabeth,
A.D. 1584.
No. 21.
44th Q. Elizabeth,
A.D. 1602.
No. 22.
1st King James,
A.D. 1604.
No. 23.

MINISTERS' ACCOUNTS.

Similar accounts in these years, to the Ministers' account of 30th Hen. 8th, the Rectory becoming leased to Sir Thomas Tirwitte, Kt, and the Lease specifying the Tithe of Lamb and Wool as belonging to the Rectory.

Grant to
Westminster Abbey
34 Hen. 8th.
No. 24.
And Reconveyance
38 Hen. 8th.
No. 25.

In 1543 King Henry VIII granted the Rectory of Hale to the Dean and Chapter of Westminster; and in 1547 received it back again from the Dean and Chapter, in exchange.—*Patent Rolls*.

Grant from
James I.
A.D. 1607.
No. 26.

From the PUBLIC RECORD OFFICE, Patent Rolls, will be produced the original GRANT, dated 1607, from King James I, to Wm. Harrison and Thos. Bulbeck, Esquires, of the Strand, their heirs and assigns, of several Rectories, including the Rectory of Hale, with all Tithes of Grain, Hay, *Wool*, and *Lambs* to the said Rectories belonging. The Rectory of Hale being described thus, "All that our Rectory of Hole "in our County of Lincoln with all and singular its rights, members and appurtenances, by a *Particular* thereof of the yearly "rent or value of £15, lately parcel of the possessions of the Monastery of Bardney, and afterwards of the Cathedral Church of Westminster."

MEM.—*Robert Cawdron, Esq., of Hale, purchased the Rectory of Messrs. Harrison and Bulbeck, in the same year that it was granted to them by the Crown.*

Vicar's
Terrier,
A.D. 1612.
No. 27.

A TERRIER of this date, from the Lincoln Registry, compiled and signed by the Vicar, Churchwardens, Sidesmen, and other Inhabitants, sets forth "all the possessions, glebes, and teiths, belonging to the Vicaredge of Hale," as follows ;

First his Lands in the *Four open Fields* of Hale, (*agreeing with the Endowment of 1346, and not agreeing with that of 1204.*)

Next the Vicar says ;

"ITEM :—Three acres more of Meadowe lying in a place called the parsonage Parke, as appeareth by the ordination of the said Vicaredge, but now in the occupation of John Cawdron, gent., and by him deteyned from the said Vicaredge."

(This distinctly recognises the Endowment of 1346, for that Endowment gives the Vicar the Three acres in the Parks, whilst the Endowment of 1204 expressly excepts the Church lands in that district.)

And the Vicar concludes as follows ;

"ITEM :—There belongeth to the said Vycaredge the teithe of "all antient enclosers within the said parishe, and all manner of "teithes whatsoever except Corne Haie Woole and Lambs not "yssuying within the antient closes aforesaid ; all which the "Vicarrs for the tyme being have had and receyved tyme out of "minde."

N.B.—*Thus the Vicar claimed all the Tithes, both great and small, over the old Inclosure, then being 277 acres, but admitted that he was not entitled to Grain, Hay, Wool, and Lamb Tithe, when issuing out of the New Inclosure, being the remaining 5700 acres. [The trespass in this action was by distraining upon the New Inclosure.]*

But neither was the Vicar entitled to those Tithes on the Old Inclosure.

Fee Farm
Roll.
A.D. 1649.
No. 28.

From the PUBLIC RECORD OFFICE, will be produced the "*Particular*," or Specification, of the Hale Rectory, as comprised in the Grant from King James 1st., as follows :

"Particular made A.D. 1649 in pursuance of an Act of Parliament for the sale of Fee Farm Rents, &c., £15 Fee Farm of Rectory of Hole, is valued in the Fee Farm of all that the Rectory of Hole, with Tithes of Grain, Hay, Wool, and Lamb, to the same belonging, by Letters Patent of the late Lord King James, dated 11th Feb. 4 James, granted to William Harrison and Thomas Bulbeck, and their heirs."

The auditor then subjoins a note as follows ;

"I find by the Records remaining in my custody, that there hath annually been allowed to the late Bishop of Lincoln, and his predecessors, £6 .13s. 4d. (10 marks) for a pension which hath usually been paid out of the General Revenue of the said County, but is particularly issuing out of the said Fee Farm Rents of the Rectories of Hole and Hekynton.

N.B.—*The 10 marks here mentioned, will be found reserved 300 years before, in the Deed No. 10.*

Lease.
A.D. 1687.
No. 29.

From the Muniments of G. B. Farrant, Esq., Lay Impropiator of Great Hale, Counterpart Lease from his predecessor Ebenezer Cawdron, Esq., of Great Hale, to John Tremaine, of a capital Messuage and certain Lands, and all the Tythes of Corne, Graine, Hay, *Wool* and *Lamb*, to the Church, Rectory, or Parsonage of Great Hale aforesaid belonging, and therewith theretofore used, letten, occupyed, or taken as part and parcel thereof, and which said Tithes were likewise purchased of His late Majesty King James 1st.

Vicar's
Terrier,
A.D. 1690
No. 30.

From LINCOLN REGISTRY. This is the Terrier mainly relied upon by the Defendant, because of the concluding words, "*Easter Offerings and all small Tithes.*" The following is a copy :

"A true in *terrier* of Lands, Lays, Meadow grounds, and all dues, belonging to the Vicarage of Hale Magna in Lyncolnshire, Anno. Dom. 1690. Imprimis, in the West Field halfe an acar of Arrable Land.

"Item in the Cowgate Field an acar of Arrable land. Item in the Milking Gate Field an acar of Arrable land. Item in the Mill Field an acar of Arrable land Meadow Ground. Item fore acars of Meadow Ground in the Yeole Fen. Item nineteen Gadds of Meadow Ground in the Stanwords. Item One acar of Meadow Ground in the Longmairs. Item the Easter Offerings and all small tithes.

"Benjamin Deakon, Curat de Hale Magna.

"John Edwards } Churchwardens of Hale."
"Edward Gall }

N.B.—*The original when called for, will be found to be loosely drawn up, and in the handwriting of the Vicar himself, or Curate, the Rev. Benj. Deakon, and signed by two of the four customary Churchwardens, most probably the two appointed by the Vicar.*

It is to be observed, that in a great Lincolnshire parish, with sheep walks, in an open-field state, the Tithe of Lamb and Wool formed the most important Tithe of all, and would scarcely be supposed by these Churchwardens to come under the denomination of a "Small Tithe."

Terriers.
A.D. 1674.
No. 31.
A.D. 16—.
No. 32.
A.D. 1697.
No. 33.

The Terriers of this date, compiled by the same Benj. Deakon, will be produced to shew the inconsistency with them of the Defendant's Terrier of 1690. In one of these, the Vicar, B. Deakon, appears to claim only "the Tithe "Grass of all the old enclosed grounds within fore foot way."

Inclosure
Decree of
Great Hale
A.D. 1699.
No. 34.

From the CHANCERY RECORDS, will be produced the *Inclosure Decree* of the Township of Great Hale. The following is an Abstract of it:

GREAT HALE INCLOSURE.

DECREE, 7th June, 1699.—*Hussey v. Baxter.*

"Recites that on 7th June 1699, Sir Edward Hussey Bart. Benj. Deakon Vicar of Great Hale, Robert Cawdron, Ebenezer Cawdron, and others, exhibited their Bill of Complaint against Richard Baxter and

"others, Defendants, Setting forth that Complainant Sir Edward Hussey was Owner of the Manors of North Hale and West Hale, in Great Hale, and of divers lands in Great Hale, And that Complainant Robert Cawdron was owner of the Manor of East Hale, in Great Hale, and of divers lands, and Complainant Ebenezer Cawdron was Owner of the Improprate Parsonage of Great Hale and of divers lands there, and Complainant Benj. Deakon, as Vicar of Great Hale, was entitled to some Glebe Lands in the unenclosed lands of Great Hale aforesaid, and to have *"some" small tithes arising out of the said unenclosed lands,* and that the other Complainants, and also the Defendants were likewise Owners :"

"That the greater part of said lands lying promiscuously the Owners had suffered losses from scarcity of inclosure :"

"And that Complainants and Defendants judging it would be beneficial for said lands to be severed, plotted, and divided, so that every of them should have his share in severalty, freed and discharged of all common, tithes, and other duties, to be had or claimed by any other Land Owner otherwise than as thereafter expressed :"

"All and every said persons, Plaintiffs and Defendants, by Articles dated 16 Sept. 1697, did consent that Enclosure should be made, and in pursuance thereof that allotments of the said grounds and profits had been made, viz :—

A.	R.	P.	
23	0	23	"Unto Complainant Benj. Deakon Vicar of Great Hale, one plot or parcel of ground called Preacher's Plot, containing 23A. 0R. 23P., in Great Hale, between Heckington Fen on the North, Garwick Meadow West &c. The same Plot to be to the said Benjamin Deakon and his Successors, Vicars of Great Hale aforesaid, and in lieu and full satisfaction of all tithes due or payable from or out of or growing, arising, or renewing, within the said Fields, Meadows, Towns, Commons, and Wastes, so agreed to be enclosed ; And in lieu of the said Vicar's Right of Common in the said places for ever."
4	0	0	"In Yeole Fen, to said Benj. Deakon and his successors, Vicars of Great Hale, for Glebe."
6	0	20	"In Mill Field "to said Benj. Deakon for his Glebe."
388	3	15	"In 7 allotments, "unto the Complainant Ebenezer Cawdron," (but it was not stated which allotments were in lieu of tithes and which in respect of his own lands.)"
2704	3	25	"In allotments to others Proprietors," including 19A. 3R. 35P. to Deacon in respect of his private estate.
3127	0	3	New Inclosure.
199	3	4	Old Inclosure, charged with 1s. per acre.
3326	3	7	

And after reciting the provisions for Roads and drains, the recitals proceed, that—

“It was agreed and consented to by all the said persons, that they their heirs and assigns should respectively for ever hold the same grounds and plots, in severalty, freed and discharged of all commons, tithes, and other duties, to be had and claimed by the said Complainant Ebenezer Cawdron, Impropiator of said Parsonage of Great Hale aforesaid, his heirs and assigns, or by the said Complainant Benj. Deakon and his successors, Vicars of Great Hale, or by any Owner of lands in the said Parish saving only the rights of the Lord of the Manor.”

“And it was further agreed that 1s. per ann: should yearly be paid to the Complainant Ebenezer Cawdron his heirs and assigns, Impropiators of the said Parsonage of Great Hale, for every acre of Old Inclosure in Great Hale, by the Owners thereafter named, their heirs and assigns: (then follows a Schedule of the Old Inclosures and the Owners, the total quantity being 199A. 3R. 4P., including “the Complainant Benjamin Deakon for his Homestead, two roods and four and twenty perches.”)

“Wherefore &c.”

“Ordered and Decreed that the said Agreement be performed.”

Inclosure
Decree of
Little Hale
A.D. 1699
No. 35.

From the CHANCERY RECORDS will be produced the Inclosure Decree of the Township of Little Hale, of which the following is an Abstract:—

LITTLE HALE INCLOSURE.

DECREE, 10th Nov. 1699.—*Hussey v. Longland.*

“After Reciting that on the 7th June 1699, Sir Edward Hussey Bart: John Harvey Esq. of Ickworth in the County of Suffolk, Robert Cawdron of Great Hale, Esq. &c. &c. &c. Benj. Deakon Clerk Vicar of Great Hale, Peter Gold Clerk Vicar of Burton Pedwardine, and others, Complainants, exhibited their Bill of Complaint against Robert Longlands and others Defendants;”

“Setting forth that Complainant Sir Edward Hussey* then was lawfully interested in divers lands and tenements in Little Hale, and Complainant John Harvey was Owner of the Manor of Little Hale, and interested in divers lands, and Complainant Benj. Deakon as Vicar of Great Hale was entitled to “*some*” small Tithes arising out of the Lands in Little Hale aforesaid, and the Complainant Peter Gold as

* The *amoveat manus*, restoring Lands forfeited by the Attainder of Lord Hussey in 1537, was passed for the Lands in Hale, to Charles Hussey, Esq., 26 & 27 Eliz.

"Vicar of Burton Pedwardine was entitled to some land in Little Hale aforesaid, and Complainants Edward Carr Esq, and others named, were seized of divers messuages and tenements in Little Hale aforesaid;"

"And that the greatest part of the land within the Field and Fen of Little Hale, lying promiscuously, the said Owners, Inhabitants of said Town, suffered great losses by reason of the scarcity of enclosure;"

"And that Complainants, together with Defendants who were likewise owners of divers lands in Little Hale, judging it beneficial to have the said grounds plotted and divided, to the end every person should have his Estate in severalty, freed and discharged of all Comons, Tithes, and other duties, otherwise than as therein and herein after expressed:"

"For accomplishing thereof, all said persons by articles dated 16th Sept. 1697, and other Agreements, did consent that the inclosure should be made of all the common fields &c. belonging to said town village or hamlet;"

"And that in pursuance of said Articles, the said grounds had been surveyed, plotted, and divided, and several and separate grounds and other profits had been allotted in manner in said Bill thereafter expressed, viz:—

A.	R.	P.	
23	3	0	"Unto Complainant Benjamin Deakon and his successors, Vicars of Great Hale, "to hold to him and his successors in full lieu and satisfaction of all tithes belonging and to grow due and payable to the Vicar of Great Hale aforesaid," abutting on the Great Drove on the north and the South Park South."
7	1	37	"Unto Complainant Benj. Deakon in right of his wife."
*0	3	7	"Unto Complainant Peter Gold Clerk, Vicar of Burton Pedwardine and his successors."
273	3	34	"Unto Complainant Robert Cawdron," in five allotments.
2157	0	24	Unto other Proprietors.
2462	0	22	New Inclosure.
77	1	26	Old inclosure.
2539	2	8	

"And after reciting the provisions made for drains and roads;"

"It was recited that it was also agreed and consented unto by all the said persons, that they, their heirs and assigns, should respectively for ever according to their several and respective estates and interests, hold the same grounds and plots in severalty, freed and discharged of all commons, tithes, and other duties, to be had and claimed by

* By the Supplemental Tithe Award, "to amend manifest errors," this land was erroneously transferred from Hale to Burton.

“the said Robert Cawdron, Impropiator of the said parsonage of Little Hale aforesaid his heirs and assigns* or by the Complainant Benj. Deakon and his successors Vicars of Great Hale aforesaid, or by the Complainant Peter Gold and his successors, Vicars of Burton Pedwardine aforesaid, or by any owner of land in Little Hale, (saving the rights of John Harvey Esq. Lord of the Manor.”)

“And it was further agreed that 1s. per annum should yearly be paid to the said Robert Cawdron, his heirs and assigns, Impropiators of the parsonage of Little Hale aforesaid, for every acre of old inclosure in Little Hale aforesaid, thereafter mentioned, by the persons therein after named their heirs and assigns, for their separate charges thereof and in such proportion as thereafter expressed viz :—(setting forth the old inclosures amounting to 77A. 1R. 26P.”)

“Wherefore &c.”

“It was Decreed &c.”

N.B.—*It will be seen by these decrees, that the Rev. Benjamin Deakon, who made the Terrier of 1699, giving to himself “All small Tithes,” when before the Court in both suits, in 1699, claimed to be entitled to “some small Tithes” only.*

It will also be seen that the Vicar received an Allotment of 23A. 0R. 23P. in Great Hale, in lieu of all his Tithes and Common Rights, and in Little Hale an Allotment of 23A. 3R. 0P. exclusively for Tithes. The Vicars have held those Allotments ever since. Throughout the proceedings of the last fifty years, the Landowners lost sight of the Allotment in Little Hale, and charged the Vicar with holding the Great Hale Allotment only. (The Vicar could not have proceeded in Chancery without first giving up his Tithe Allotments). The Vicar Bingham, availing himself of the oversight of the Landowners, replied “if you will shew me how much of the Great Hale Allotment was given for my Common Right, and how much for Tithe, I will give up the latter portion,” knowing perfectly well that it

* In April, 1843, the assistant Tithe Commissioner, Mr. Mee Mathew, reported to the Tithe Office as follows, *There is no mention of the Impropiate Rector in the Little Hale Inclosure Decree!*

was impossible to answer the condition, and all the while keeping his counsel about the Tithe Land in Little Hale.

*The present Vicar, in his printed statement, speaks of the Tithe Allotments much as his predecessor did, but now that he is acquainted with the facts he will probably give up the Tithe Land, otherwise he is getting his Tithes twice over.**

Terriers.
A.D. 1700.
No. 36.
A.D. 1706.
No. 37.

TWO TERRIERS of this date, after the Inclosure, and prior to the Composition of 1707, shewing that the Vicar then held all the Tithe Allotments, as he held them in 1707, and has held them ever since. These Terriers were made by the new Vicar, *R. Parke*.

Terrier.
A.D. 1707.
No. 38.

THE TERRIER of this date, 1707, compiled by Vicar Parke, will be produced by the Defendant, because of the words therein, "*all small Tithes*."

The following is an abstract of it :—

After setting out the Vicar's Lands, which included all the Tithe Allotments, the Vicar proceeds,

"The tyth of hemp flax cole and rape did all belong to the Vicar before the late inclosure, but are taken away by a decree upon the said inclosure, yet no consent being given to the said decree on the Church's part, there have been some proposals made and several steps taken for a subsequent composition of three-half-pence per acre for ever in lieu of all small tyths, which composition is not yet completed. The tyth calves foals milk pigs pigeons turkeys geese ducks chickens eggs, honey &c., do still belong to the Vicar, also the tyth of all fruits in orchards, as apples, pears, &c., and the tyth hay of

* Extract from Mr. Sugden's printed Statement :

"The Landowners relied upon the Allotments to the Vicar in lieu of tithes, glebe, and common. The Vice-Chancellor, Sir Thos. Plomer, in his judgment (1817) shewed upon this part of the case, that it did not appear that what the Vicar then held had been given for Tithes, and that from the three ha' pence an acre having been given as a composition for all small Tithes only eight years after the enclosure, it was to be presumed all such portion of land had been given up at that period."

“several small Home grounds, but are all to come within the composition aforesaid which is to be perpetual when confirmed under the “broad seal.”

N.B.—*It is manifest that the words in this Terrier were not intended to signify that the Vicar was entitled to “all small Tithes,” but simply that the new composition, together with the Allotments, was to cover not only the items enumerated in the 1st paragraph, but also all the other small Tithes of the Vicar, viz: those in the 2nd paragraph. It is against reason to suppose that in this minute specification of his dues, the Vicar would have omitted the all-important Tithes of Lamb and Wool, had he been entitled to them.*

Comparison
of
Terrier, 1707,
with
Endowment
of 1346.

The TERRIER of 1707, in its details, will be found to confirm the *Endowment* of 1346; the small Tithes enumerated in the Endowment, minutely agreeing with the Terrier, as follows:

Tithes by Endowment, in 1346.	Tithes by Terrier, 1707.	Endowment, 1346.	Terrier, 1707.
Calves	Calves	Orchards	Orchards
Foals	Foals	Gardens	Gardens [ed.
Pigs	Pigs	Fishings	Country drain-
Geese	Geese	Mortuaries	Mortuare
Pigeons	Pigeons	Oblations	Surplice Fees
Eggs	Eggs	Maynport	
Milk	Milk	Wax	Abolished at the Reformation.
Flax	Flax	Cerage	
Hemp	Hemp	St. Peter's	
Bees	Honey	Pence	
Fowlings	Ducks	Mills	Not tithed in 1707.
Pullets }	Turkeys	Ovens	
Hens }	Chickens	Trades	

N.B.—*It will be observed that the Tithes of Lamb and Wool were not given by the Endowment, and are not claimed in this Terrier of the Vicar.*

Bingham
v.
Everard.
1813, 1817.
No. 39.

The BILL and ANSWER, 1813, in the suit instituted by Vicar Bingham, under which he obtained a DECREE in his favor, in 1817, for Tithe of Lamb and Wool, will be produced by Defendant ;

But it will be seen that the Decree was obtained on the wrong endowment.

Further, Plaintiff will contend that he was no party to those proceedings, and cannot be bound by them.

Farrant
v.
Bingham.
1819, 1821.
No. 40.

The BILL and ANSWER, 1819, and DECREE, 1821, in the Suit by the Lay Impropiator of Great Hale, Sir George Farrant, claiming the Tithes of Lamb and Wool against the Vicar, will also be produced by the Defendant ;

But it will be seen that this Bill was dismissed, not on the merits, but simply on the ground that the Lay-Rector had received Allotments for all his Tithes, and could claim nothing further ; the Enclosure Decree being binding on him though not binding on the Church.

Dawson
v.
Bingham.
1821.
No. 41.

DAWSON'S PETITION to the Vice Chancellor, 1821, for leave to file a Supplemental Bill, in the nature of a *Bill of Review* ; for a re-hearing of the Vicar's suit of 1813, on the ground of fresh evidences discovered,

And the Appeal from the Vice-Chancellor to the Lord Chancellor Eldon, (the Petitions in both cases being dismissed with costs,) will also be produced by Defendant ;

But it will be seen from the judgment of Lord Eldon, that the merits of the case never came in question, the ground of dismissal being, the want of due diligence in not making the searches at the proper time. Vide the Judgment, Jacob's Reports, Dawson v. Bingham, 1821.

Vicar's Bill
1830.
No. 42.
Vicar's Bill
1844.
No. 43.

SUITS INSTITUTED by the VICAR in these Years, against all the Occupiers in the Parish, for arrears of Tithe of Lamb and Wool, *but never prosecuted by the Vicar.*

Mandamus.
1849.
No. 44.

PROCEEDINGS of the Landowners, in the application to the Court of Queen's Bench, for *Mandamus* to compel the Tithe Commissioners (amongst other things) to hear and determine the pending suits of 1830 and 1844.

Reported in Law Journal, Q. B., 1850.

Mandamus.
1852.
No. 45.

PROCEEDINGS in the Queen's Bench, for *Mandamus*, to compel the Tithe Commissioners to hear and decide, what Tithes were covered by the 1s. per acre on old Enclosure.

Reported in Law Journal, Q. B., 1852.

1850.
The Tithe
Commuta-
tion
Award.

The TITHE COMMUTATION AWARD, dated 20th February, 1850, confirmed 28th of the same month, and amended by Supplemental Award in 1853, with the Tithe Apportionment, confirmed also in 1853. The Award finds, as follows :—

“That the Lands called the Park Farm were Tithe-free,”
(*being the Parks, formerly of Bardney Abbey, and so called in the Endowment of 1204.*)

“That the Glebe Lands of the Vicar contained 61A. 1R. 9P.

“That all the Titheable Lands in the parish were subject to the payment of all manner of Tithes in kind.

“That Sir George Farrant Kt. and Thomas Farrant Esq. were Impropriators of all the Great Tithes on the antient Inclosures of Great Hale; and that Richard Godson Esq. was Impropriator of all the Great Tithes on the antient Inclosure of Little Hale.

“That the owners of all the rest of the Land of the parish were also Impropriators of all the Great Tithes arising on their respective lands.

And that the Vicar for the time being *was in possession of the Tithes of Wool and Lamb*, arising on all the Titheable lands of the said parish, and was also entitled to all the residue of the Tithes of the said parish.

Thereupon the Commissioner awarded a Tithe rent charge of £10 6s. 4d. to the Impropiator of Great Hale, and of £3 13s. 8d. to the Impropiator of Little Hale (being the amount of former payments under the Inclosure award); also to the several Landowners, by schedule, a rent charge £1127 1s. 8d. instead of their Great Tithes.

And the Commissioner further awarded as follows, "That the annual sum of £360 by way of rent Charge shall be paid to the Vicar for the time being of the said parish, *or to the party lawfully entitled to the same*, instead of the Tithes of Lamb and Wool, of all the Titheable Lands of the said parish;" (*and which sum is apportioned upon the Old and New Inclosure.*) AND an Annual Rent-Charge of £450 to the Vicar in lieu of all the residue of the Tithes.

	A.	R.	P.
N.B.— <i>The Titheable Lands</i>	5826	1	24
<i>Tithe Free</i>	221	0	37
<i>Roads and Wastes</i> ..	118	1	35
	<hr/>		
	6166	0	16

Supplemen-
tal
T.C.Award,
1853.
No. 46.

The SUPPLEMENTAL TITHE COMMUTATION AWARD, "to amend manifest errors;" whereby the land of the Vicar of Burton was *erroneously* transferred from the Parish of Hale to Burton Pedwardine.

Mr.Sugden's
Printed
Statement,
1858.
No. 47.

The "STATEMENT OF FACTS concerning the Vicarage of Hale," printed and circulated by the Hon. and Rev. Mr. Sugden, (in substance the Defendant's case as opened by his Counsel, Mr. Bovill, Q.C.,) and marginal notes in answer.

Parol

Mr. Benj. Ellis Bowles, and other witnesses (as in proofs), to prove that the Tithe of Lamb and Wool was never rendered in kind, in the present Century, prior to

1812 :—that it was paid in 1820 and for a short time after, under coercion of the Decree of 1817 : and that neither the Lamb and Wool Tithe, nor the Tithe Commutation Rent-Charge in lieu of it, have ever been paid to the Vicar for the last 30 years and upwards : also to identify by the Tithe Maps, &c., certain of the Lands now held by the Vicar, as comprising all the Tithe Allotments awarded to the Vicar at the Inclosure in 1699 ; so that the Vicar, unconsciously, has already got all his own Vicarial Tithes twice over.

MOORE & PEAKE.

C. RODGERS.

Sleaford,

May, 1860.

APPENDIX TO BRIEF.

In the Register, called "INSTITUTIONS," of Henry Burghersh, Bishop of Lincoln, from A.D., 1320, to A.D., 1340, is the Ordination of a Chantry in the Church of Hale, of which the following is a Translation. It is dated February 2nd, 1337; and Confirmed by the Bishop, April 4th, 1337.

Ordination of a Chantry }
in the Church of Hale. } "TO ALL Sons of Holy Mother Church
"who shall see or hear the present Charter,
"Hugh de Wheteleye, Parson of the Church of Staynton near
"Langewath, wishes health in the Lord, and to commend the things
"under-written to perpetual memory.

"THE KING OF PEACE, the Lord of Lords, who holds rule
"over all things on high; who leads Man in this vale of tears marvel-
"lously to approach to His likeness and image, hath set to man,
"according to the judgment of His will, his bounds which may not be
"passed; but, at the end of the course of this most brief life, which is
"as it were a mere pilgrimage, and which, without defilement of many
"pollutions, no one can go through, he who was made of the earth,
"to earth and ashes will return; and at the last day will rise again
"with the body which he has borne, to render an account of his own
"deeds in the severe judgment; and to have, eternally, life or death,
"according to his merits or demerits. These hard and terrible things
"I, set in this tearful exile, deeply considering and fearing, have made
"disposition to provide for the souls of those to whom I am more
"closely bound, as also for my own soul; and to their perpetual health
"to exchange, by a happy commerce, earthly things for heavenly, and
"transitory for things eternal.

"WHEREFORE, I make it known to you all by these presents,
"that for the health of the soul of the once D^{ns} Elyas de Wheteleye,
"late Rector of the Church of Hale, my brother deceased; and of my
"own soul, and of the souls of Adam my father, and Petronilla my
"mother, Nigel my brother, the Lady Isabel de Beaumont, the Lord
"Henry de Beaumont, the Lady Alice his wife, Henry de Loughton,
"and Beatrix his wife, Adam de Loughton, Marjory his wife, John de

"Hale, D^{ns} Roger de Freston, Chaplain, and Walter de Grenewyck,
 "Clerk; and of all the faithful defunct, and in future deceasing; and
 "for the increase of the Divine Worship, there being obtained to this
 "end the license and assent of our Lord the King, and of the Patrons
 "and Rector of the Church of St. John the Baptist, of Hale; and
 "of others whose interest it might be in this behalf, *I have granted*,
 "given, and by this present Charter of mine, for me and my heirs, in
 "free, pure, and perpetual alms, for ever have confirmed, to D^{ns}
 "William the son of Richard Geneway, of Great Hale, and his suc-
 "cessors, Chaplains, who are to celebrate for ever Divine Service every
 "day at the Altar of the Blessed Catherine the Virgin, in the aforesaid
 "Church of Hale, for the souls above-said; to the support of them and
 "of the burdens of this Chantry, two Messuages, two Mills, twenty
 "and four acres of Land, and the moiety of one acre of Meadow, with
 "the appurtenances, in Great Hale and Little Hale, as in the Charters
 "to this end made are more fully expressed: Also I have granted, that
 "four acres of land, with the appurtenances, in the same vill of Great
 "Hale, which John le Smyth, of Hekynton, and Margery his wife,
 "hold for the life of the same John and Margery; and which, after the
 "death of the said John and Margery, ought to revert to me and my
 "heirs: and that eight acres of land, with the appurtenances, in the
 "same vill, which Beatrix daughter of Hugh Irnenside, and Agnes
 "sister of the same Beatrix, hold for the life of the same Beatrix and
 "Agnes; and which, after the death of the said Beatrix and Agnes,
 "ought to revert to me and my heirs; remain to the aforesaid D^{ns}
 "William, the Chaplain, and his successors, the Chaplains successively
 "obtaining this Chantry; to be held, together with the Messuages,
 "Mills, twenty and four acres of Land, and the Meadow aforesaid,
 "with all commodities and profits, to the Messuages, Mills, and Lands
 "aforesaid, in any way belonging to the same D^{ns} William, the Chap-
 "lain, and his successors, the Chaplains who are to celebrate Divine
 "Service every day for the souls above-said, according to the ordination
 "of mine under-written, in the said Church of Hale, in free, pure, and
 "perpetual alms, to the support of them, and of the burdens of the
 "said Chantry, as is premised, freely, quietly, well, and in peace for
 "ever; saving the right of the mother-church of Hale aforesaid, and
 "of other neighbouring Churches, to which I do not intend, by this
 "my Deed, in any thing to do damage.

"AND that this Chantry may be wholesomely ordained, for per-
 "petual times to endure, I will and ordain by these presents, that the
 "aforesaid William, the Chaplain, whilst he shall live and hold the
 "said Chantry, and every one of his successors in the said Chantry,
 "rightly collated in future, every day, excepting the greater feasts
 "and others under-written, for the soul of the said D^{ns} Elias, and the
 "souls of others of whom there is mention above; and of all my
 "relations, friends, parishioners, and benefactors; and of all the faith-
 "ful defunct; as also for the healthful life and estate of me; and also
 "of the Lord Henry de Beaumont, the Lady Alice his wife, Henry de

“Loughton, Beatrix his wife, John de Hale, Roger de Freston, and
 “Walter de Grenewyck, aforesaid, whilst we shall live; and for our
 “souls when and as soon as we shall finish this present life; at the
 “Altar aforesaid, in the said Church of Hale shall celebrate;—except
 “when, from legitimate and reasonable cause, or for some days—
 “suppose four, five, or six at most—for the cause of recreation, or
 “from other probable cause not feigned or wilful, they shall be absent.
 “In which cases let them celebrate by themselves, if they are able and
 “willing; else, under bond of their oath, let them cause as many
 “Masses to be said, in compensation to the said persons defunct;
 “provided that neither often, nor beyond the said six days at any one
 “time, they absent themselves without the vill of Hale, where I will
 “and ordain that they continually dwell.

“ALSO, I will and ordain, that the same D^{ns} William, the Chap-
 “lain, and every his successor, in the greater feasts—for instance,
 “Christmas Day, Easter, Ascension Day, Pentecost, the Assumption
 “of the Blessed Mary, her Nativity, Purification and Annunciation,
 “All Saints, and in other feasts solemn and of nine lections; and in all
 “Lord’s Days, celebrate the service of the day, if this, from devotion,
 “they will: And in all fifth days of the week, that of the Holy Spirit;
 “and in sixth days of the week, that of the Cross; in honour of the
 “five wounds of Jesus Christ, which, for the redemption of the human
 “race, He in mercy suffered on the cross: And in all Sabbath days,
 “that of the blessed Mary, in honour of the five joys—unless a feast of
 “nine lections shall hinder; in which case, this may be done on another
 “day of the week, on which it may more conveniently be done, accord-
 “ing to the use of the said Church; so that on the said days, after the
 “Collect of the day, in all Masses, there be said special Collects for the
 “living and dead above-said. And, moreover, within the canon of the
 “Mass, and without, there be had for them special commemoration,
 “and devout prayers be made for the same persons: and that the said
 “Chaplains, every day on which it happen that they do not celebrate
 “the service of the blessed Mary, or that for the dead, make special
 “memory of the blessed Mary, and also for the dead; and that every
 “day they say the full service, ‘De Mortuis vir Placebo, and Dirige,
 “and Commendacion,’ for the souls aforesaid; the days, according to
 “the use of Sarum, of our Lord’s Nativity, Easter, with the two days
 “following Ascension, Pentecost, the Assumption of the Blessed Mary,
 “her Nativity and Purification, All Saints, and the day of St. John
 “Baptist; on which days I wish to spare them in this point, on account
 “of the solemnity of the Festivals, only excepted.

“ALSO I will and ordain that the same Chaplains, on double
 “Feasts and Lords Days, assist the Rector of the Church of Hale, *or the*
 “*Vicar of the same, if any there shall be in future,* or the Parish Chaplain,
 “in the Church aforesaid, at Matins, Vespers, and other Canonical
 “hours, and at Mass, in Psalmody, Chanting, and Reading, if they
 “have time for it, giving their aid to the best of their powers; and

“celebrate their own Masses at that hour of the day, on which to the
 “devotion of the people, they shall be able most meetly to celebrate,
 “without prejudice or damage to the Church aforesaid, or to the Rector
 “of the same, or to the Vicar for the time being: And that every of
 “the Priests, directly they shall have canonically obtained the said
 “Chantry in the Church of Hale, before the Rector of the same, the
 “Vicar or the Parish Chaplain, swear on the Holy Gospels of God, the
 “book also being touched, that they will do nothing to the prejudice of
 “the said Mother Church, nor minish the Parochial rights of the same;
 “but to the best of their power will conserve them wholly uninjured,
 “and will never inflict injury or loss on the same Church, in Tithes
 “greater or less, oblations, obventions, or other rights whatever; but
 “if any of the things pertaining to the same shall have come into their
 “hands, these, without diminution, to the Rector of the same, or the
 “Vicar for the time being, or their Ministers for this purpose deputed,
 “they will faithfully restore without delay, unless the Rector or Vicar
 “in this behalf shall wish in any thing to do them special favour.

“ALSO I will and ordain, that if the said D^{ns} William, or any
 “of his successors, who shall have obtained for the time the said Chantry,
 “shall in process of time be prevented by old age or ill health, so that
 “in their own persons they cannot fulfil the premises, then they cause
 “these to be fulfilled at their own costs by another fit Chaplain, and the
 “same Chantry to be faithfully served according to the ordination of
 “the same: and if these Chaplains in process of time shall in other
 “ways be found unable or unworthy, as for instance, on account of any
 “crime committed, to the performance of this Chantry, and of this shall
 “be reasonably convicted, I will and ordain that thereupon they lose
 “their right in the Chantry aforesaid, and also be deprived of the same
 “ipso facto, and immediately the same Chantry so vacant be conferred
 “on another fit Chaplain.

“ALSO I will and ordain, that the said Chaplains, the Houses and
 “and Mills of the aforesaid Chantry, also the Chalice, Books, Vestments,
 “and other Ornaments which are required to this Chantry, of which
 “provision already is made by me, in the same good state in which
 “they receive them, shall at their own costs conserve and repair; and
 “shall find new Vestments, Chalice, Books, and other Ornaments, as
 “often as there be need; also a competent light, bread and wine for
 “celebrating the Divine Offices for the living and dead above-said. And
 “all things which in my days I shall confer to the augmentation of the
 “support of the Chantry aforesaid, and shall procure to be conferred
 “by others, they shall freely receive in their own name and their own
 “proper right; So that neither to the Rector of the said Church of
 “Hale, nor to the Vicar if any there shall be for the time, nor even to the
 “Chaplains serving the said Chantry, nor to any other single person,
 “body of persons, or College, it shall be lawful ever for the future, the
 “things or goods movable or immovable, to the support of the premises
 “assigned or to be assigned, or any part of the same things, to alienate,

“bequeath, or to other uses in any way convert: Which, on the part
 “of God and the Blessed Virgin His Mother, so far as I can, to all
 “Men I firmly inhibit and also interdict.

“AND lest any one should be ignorant as to the ornaments to the
 “Divine Service deputed, for the celebrating this Chantry, by me to
 “the said D^{ns} William delivered, at the costs of him and his successors
 “to be conserved and sustained, for perpetual memory of the thing
 “I have thought right to have them inserted in these presents—viz:
 “one Chalice, worth 20s.; two Vestments (one, namely, a Festival, worth
 “20s., and the other a Ferial, worth 8s.); one Missal, worth 26s. 8d.;
 “three Towels for the Altar, worth 3s.; one Cloth for the Altar, worth
 “3s.; two Phials, worth 8d.

“ALSO, I will and ordain, that the said D^{ns} William, and every
 “his successor, shall cause the Land of the said Chantry to be well
 “tilled, and competently manured, after the custom of that country;
 “and at whatever time of the year he shall cede or decede, or for any
 “cause shall be removed from the Chantry aforesaid, he shall demise
 “the Land to his successor, well tilled and manured, and also well
 “sown, according as the quality of the said Land requires, if this shall
 “happen after the time of seed; but if before, then he shall demise
 “seed sufficient and proper for the Land to his successor, to be sown
 “in the same: And that every Chaplain holding the said Chantry, at
 “whatever time of the year he shall cede or decede, or be removed
 “from the same, shall leave and demise to his successor—four Oxen,
 “each worth 13s. 4d.; two Horses, each worth 10s.; one Cart, with
 “the appendages, worth 6s. 8d.; one Plough, with the appendages,
 “worth 5s.; one Dish, with a Lavatory, worth 5s.; one brass Pot,
 “worth 4s.; and another small brass Pot, worth 2s.; two Platters,
 “worth 3s.; one Table-board, with one Table-cloth, and one Napkin,
 “worth 4s.; all of which to the said D^{ns} William, the first Chaplain set
 “over the said Chantry, of the goods of the aforesaid D^{ns} Elias and
 “mine, and of the said value or more, I have delivered and demised
 “that they might be in the same Chantry enduring for ever.

“MOREOVER, that the said Priests may be perpetual, and all
 “the things above-said may the more securely, freely, and better
 “perform, by reason of their title being more firm in the same, I will
 “and ordain by these presents, that these several Priests to the Bishop
 “of the place (if there shall be one), else to the Official (the See being
 “vacant), by me, or the persons to be below deputed, when this
 “Chantry shall be vacant, be canonically presented; who, thus present-
 “ed, are by the same to be admitted, and remain perpetual—unless
 “some cause in these presents expressed, or other canonical cause,
 “shall call for other procedure. And that I, the above-said Hugh,
 “this turn, and for the future, in like manner through the whole of my
 “life, have the presentation of the Chaplain, to the Chantry aforesaid
 “to be presented, as often as it shall be vacant; whether by death or
 “cession, or removal of the Chaplain serving the same: and that the

“Rector of the Church of Hale, after my death, to the same Chantry
 “when it shall be vacant, a fit and honest perpetual Chaplain, within
 “eight days from the time the vacancy of the same becomes known to
 “the aforesaid venerable Father, or to the Official, if the See, as is
 “premised, be vacant, freely present in future. And if the same
 “Rector of the Church of Hale, for the time being, to the said Chantry,
 “within the eight days aforesaid, any fit Priest, as is before-said, shall
 “defer or neglect to present, then let the presentation of the same
 “Chantry devolve, for that turn, to the religious men, the Abbot and
 “Convent of the Monastery at Bardeneye, the patrons of the said
 “Church; and so let the same religious men, within eight other days
 “then next following, provide for such a head of good conditions to the
 “same Chantry, and present to it, as is before-said, that turn; which,
 “if they shall not do, let the power of providing for the same Chantry,
 “and of conferring it in form before-said, devolve, that turn, to the
 “Bishop of Lincoln, for the time being, if the See be full, or, the
 “Episcopal See being vacant, to the Official of Lincoln, who shall then
 “be; so that the same Bishop, if the See be full, or the Official, if the
 “See be vacant, within eight days after such devolvment, provide for
 “a fit head to the same Chantry, and confer it for this turn; which, if
 “they shall not do, let the power of providing for the same, and of
 “presenting to it, return to the Rector of the said Church in form
 “above-noted.

“ALSO, I will and ordain, that the Charter of our Lord the King,
 “and other original instruments touching the said Chantry, together
 “with this ordination, after my death, remain perpetually in the
 “Treasury of the Monastery of Bardeneye, for the greater security;
 “and that transcripts of the same original instruments, under the Seal
 “of the venerable Father, the Lord Henry, by the Grace of God,
 “Bishop of Lincoln, abide perpetually in possession of the Chaplain
 “who shall hold this Chantry: And, moreover, that a transcript of this
 “my Charter and Ordination be written in gross letter, and fixed in a
 “certain table, which shall perpetually be suspended near the aforesaid
 “Altar, in the Church of Hale above-said; and, as often as need be, be
 “renewed at the costs of the said Chaplain; that, to those who wish to
 “look into the matter, there may be the more manifest exhibition of
 “the form of this my ordination.

“IN testimony of all which things, my Seal to these presents is
 “appended. And, because it to many is unknown, I have procured
 “the Seal of the said Father to be appended to these presents. These
 “being witnesses:—Henry de Lughton, of Hale; John de Hale;
 “Walter de Boleshour, of the same; John Hanville, of the same;
 “Richard, son of William de Hale; Thomas Clemente, of the same;
 “John de Folkingham, of the same; and others.

“DATED, at Lincoln, on the Feast of the Purification of the
 “Blessed Mary, in the year of our Lord, one thousand three hundred
 “and thirty-six.

“AND, we, Henry, by Divine permission, Bishop of Lincoln, all
 “and singular the premises, by us diligently inspected, holding as
 “ratified and grateful, them all and singular, so far as to us pertains,
 “by our authority pontifical, with assent of the said Rector, to the
 “perpetual establishment of the matter, do approve, ratify, and con-
 “firm, by these presents, by the muniment of our Seal corroborated.
 “Dated, at Lincoln, the 2nd of the Nones of April, in the year of our
 “Lord, one thousand three hundred and thirty-seven, and of our
 “consecration the seventeenth.”

N.B.—*This Deed supports the fact that the
 Vicarage of 1204 was not existing
 in 1337.*

THE CHANTRY OF THE BLESSED MARY, (13th Century.)

The CHANTRY of the BLESSED MARY, in the Church of Hale, was founded early in the 13th Century. In 1284 Hugh de Hale was presented to this Chantry by William de Hale, Nicholas de St. Quintin, and others:—in 1343 Robert Irnensyde was presented, and in 1346 he resigned this Chaplaincy on being instituted to the *Vicarage* of Hale, *then newly created* and endowed.

THE CHANTRY OF ROBERT DE ASKEBY (1314.)

This CHANTRY, for support of a Chaplain daily celebrating in the Church of St. John the Baptist at Hale, was founded in 1314, and largely endowed, by Robert de Askeby, Clerk, for the health of his own soul, and the souls of different members of his family, &c.: and he ordained that the Chaplain, after the singing, or saying, of the Offertory of the great Mass, in the Chancel, and after Oblations made, should then begin Mass for the aforesaid souls, at the altar on the south side of the church. Moreover he ordained that the said Chaplain should say every day for ever, with the Parish Chaplain (*i. e.* the Curate) vespers, and all other hours, of the Blessed Virgin, before her altar in the said Church.

N.B.—*Had there been a Vicar existing at
 that time he would have been named.*

WESTMINSTER, June 19th, 1860.

IN THE COMMON PLEAS.

BETWEEN

WILLIAM PETCHEL, Plaintiff,

AND

THE HON. & REV. FRANK SUGDEN,
Defendant.

Tried before Chief Justice Erle and a Special Jury.

Counsel for the Plaintiff,—Mr. Manisty, Q.C., Mr. Quain, Q.C., and
Mr. Badeley.

Solicitors,..... { Moore & Peake, Sleaford.
 { C. Rodgers.

London Agents,.....—Taylor & Woodward.

Counsel for the Defendant,—Mr. Bovill, Q.C., Mr. Reilly, and Mr. White.

Solicitors,.....—White, Borrett, & White, Whitehall Place.

MR. QUAIN opened the Pleadings.

MR. BOVILL.—May it please your Lordship—Gentlemen of the Jury, The plaintiff in this case, who is represented by my learned friend Mr. Manisty, is one of the owners and occupiers of land in the parish of Great Hale; I have the honor to represent the Hon. and Revd. Mr. Sugden, the Vicar of that parish, and the question you will have to determine is, whether the Vicar has a right to distrain for tithe rent, which has been paid beforetime as tithe in kind, and found by the Tithe Commissioners under their award of 1850. The landowners, or some of them, in this parish, have thought fit to dispute the right of

the Vicar as to the tithe rent charge, and the present plaintiff is put forward to represent some of the landowners—to have your judgment, and that of my Lord Chief Justice of the Court of Common Pleas, on the subject of the right of the Vicar to take this rent charge.

Gentlemen, the matter is one of some importance, for the sum in respect of which this tithe rent charge is claimed, amounts to £360 a year.

Gentlemen, in the year 1850, the matter being investigated by the Tithe Commissioner, it was ascertained that all the lands in the parish were liable to pay tithe in kind, notwithstanding several agreements and compositions had been acted upon by the landowners, but which were, or were held to be, mere temporary agreements. It was found distinctly by the award of the Commissioner that all the lands of the parish were subject to pay tithe in kind. That being so, under the Tithe Commutation Act, it was necessary the Commissioners should assess what should be paid in all time for the future, by way of rent charge, instead of tithe being taken in kind. That was settling all questions in dispute by having the matter concluded by this tithe rent charge, which was a charge fixed on the lands in perpetuity.

Therefore in the year 1850, the tithe being all found payable in kind, there was a question raised about the tithe of *wool* and *lambs*, and it appears the tithe of *wool* and *lambs* has been commuted for a rent charge of £360 a year. The rest of the tithes, which were also payable in kind, were at the same time commuted; and by the award, which by and bye will be produced before you, the rest of the tithes were commuted for I think £450. Now these two sums, the £450 and £360, represented the whole of the charge; the £450 represented all the small tithes except wool and lambs, and the £360 was the tithe rent charge in respect of the tithe of wool and lambs—these two sums represented the small tithes of Great Hale, of which parish Mr. Sugden is now the Vicar. Gentlemen, besides the small tithes which belong to the Vicar, there would be the great tithes which are in the hands of the lay impropriators. The amount of the great tithes was assessed at the same time and commuted at the sum of £1162, and that became the property of the landowners. With that, gentlemen, you will have no further concern. The question with which you will have to deal to day, is, the right of the Vicar to the commuted tithe rent charge of wool and lambs. They do not dispute the right to the £1162, but they do to the other. Gentlemen it is not a question before you to day whether the land is to pay tithe or not, that question was decided in 1850 by the award of the Commissioners, but the question is whether the Vicar was entitled to the tithe rent charge of wool and lambs before the making of the award. That is the nature of the question you will have to try, and no more.

Now, gentlemen, in order that you may be enabled the better to understand it, I will proceed to give you somewhat of the history of this parish. The parish of Great Hale formerly belonged to the Abbey

of Bardney, who held various possessions in the County of Lincoln;* and being entitled to the tithes of the parish of Great Hale, the Abbot and Monks of those days took possession of them to themselves, and in order to provide for the services of the church, they paid a Vicar, who was to take the spiritual care of the parish on himself, and, as you may be well aware, in early times it became necessary to make a provision for the Vicar, and the mode in which that was ordinarily done was by the Abbot giving up to the Vicar, and endowing the Vicarage with the benefit, (and it was the way in which it was most ordinarily done) of the small tithes of the parish; and, indeed, where the Vicar is endowed, and has been in receipt of the greater part of the small tithes of the parish, it followed as a presumption of law, which a jury may be expected to make, that if he has received some of the small tithes he is entitled to all. It is curious enough, that in the litigation that has existed in this particular parish of Great Hale, the view that was taken by Lord Eldon is expressed in page 128 of Mr. Eagle's book on tithes. Mr. Eagle, as you may know, was a great authority on these cases—he says “A Vicar may establish his right to a particular species of small tithes, and under a general title by endowment or usage, to all small tithes; so it has been held that where he proves a perception of some small tithes, *and no other person has received any small tithes*, he will be entitled to all small tithes whatsoever, although small tithes have never in fact been paid to himself or his predecessors.” And then he refers to some other cases where tithes were enumerated, and he says, “The true construction of the enumeration was, that the articles were only put to *instance* what was payable at that time, but they would clearly carry all Vicarial tithes, although not expressly mentioned in the instrument of endowment.” That is in Eagle on Tithes, page 128. I merely mention this in order to shew, that supposing the Vicar to be entitled to *some* small tithes, the presumption of law is, the Vicar would be entitled to *all* the small tithes, wool and lambs being small tithes. There is no dispute about the other, but they set up in this case, that the Vicar is not entitled to the tithe of wool and lambs.

Now, gentlemen, in trying such a right as this in 1860, you cannot expect that every document should be produced, and a clear title brought before you, but it will be some satisfaction to you to learn that this question, as to the right of the Vicar to the tithe of wool and lambs, was brought under discussion in the year 1817, and in the following year was finally settled and disposed of in favor of the Vicar; and the parties paid up arrears amounting to between three and four thousand pounds; and now it is that the landowners again mean to contest the Vicar's right. Now, gentlemen, in investigating matters of this sort, we must go back beyond the period of 1817. I may observe that although the matter was, as I have stated, decided in favor of the Vicar in 1817, yet the landowners have a right to open the question; they are entitled to do

* Bardney Abbey was founded A.D., 697; destroyed by the Danes A.D., 870; and restored at the Conquest by the De Gaunt family, who gave (*inter alia*) the advowsons of the Churches of Hale and Hekynton.

so in point of law; but the same documents that will be before you to-day were accessible to them in the matter at the time it was formerly discussed and decided.

Now, gentlemen, I shall have to invite your attention to some of the earlier records and documents in the case, and upon which a decision was obtained in the year 1817, and which was affirmed some years afterwards; and the first period to which I am about to call your attention is the time of Edward the First, in the year 1280, that is the 9th of Edward the First. At that time we find this—that the Vicarage of Hale had been established, and had been endowed, and we have, and I shall be able to produce before you, a copy of the original record which is still in the Bishop's Registry at Lincoln. We find this entry of the Vicarage. It is "Roll of Institutions," &c., 1280. We find this—"Vicarage of Hale, William de Hale, Chaplain," (He was, I suppose, Chaplain to the Abbot at the time) "presented by Master Nicholas de St. Quintin, Rector of the Church of Hale, by express consent of the Abbot and Convent of Bardeney, patrons of the same, to the Vicarage of the Church of Hale," (shewing it was a Vicarage at this time) "for a long time vacant; inquisition having been first made by William, Archdeacon of Lincoln, by whom was accepted, &c., was admitted to the said Vicarage the 3rd of the Ides of October, in the first year at Lafford, and instituted perpetual Vicar, with the burden of personally ministering, and canonical obedience to the Lord Bishop being sworn, and corporal residence, it was written to the said Archdeacon that he, &c."

(Now we come to the important part, in reference to the endowment)—"The said Vicarage consists in the whole altarage according to ordination of Bishop William, exhibited to the Lord Bishop, namely, in all oblations and small tithes, with the toft which was Godwin Grikkes, and with the land belonging to the Church, except the toft which was Ralph Pilat's, near the Church on the north side, and except the place in Hale Fen which is called the Park: and the Vicar shall be responsible for episcopal customs."

Now, gentlemen, we find from that ancient document, not only the existence of a Vicarage, and that the Vicarage existed as a separate endowment, but also that it had existed from an ancient period, for there had been "according to an ordination of Bishop William," a Vicarage consisting of "all oblations and small tithes." Now this is the earliest notice we have of the Vicarage and of the endowment.

Now, gentlemen, that state of things existed (the Abbot of Bardenay being entitled to the Rectory and great tithes, and the Vicar entitled to all the small tithes,) that state of things existed down to the time of Henry the Eighth, and at that time, upon the destruction of the Monasteries and Religious Houses, the property of the Abbot became vested in the Crown, and the Crown became entitled to the great tithes, but the small tithes would still remain the property of the Vicar, and the Vicar would have the enjoyment of them, and the Crown would

have no right to keep possession of the Vicarage. Gentlemen, I believe, though it will not be very material to the case, that shortly after the dissolution of the Abbey, the King granted the great tithes to the Dean and Chapter of Westminster: it eventually came back in the time of Elizabeth to the Crown, and in the 4th of James the First there was a grant made by him to certain persons of the name of Harrison and Bulbecke, of Rectories in other parts of the country, to the number of nine or ten, and amongst others, "all that our Rectory of *Hole*, in our said County of Lincoln, with all and singular its rights members and appurtenances, by a particular thereof of the yearly rent or value of £15, lately being parcel of the possessions of the late Monastery of Bardney in the said County, and afterwards parcel of the possessions of the late Cathedral Church of Westminster in the County of Middlesex."

Then the other Rectories are, some in the County of York and some in the County of Kent, and in various parts of the country, and then there are the usual general words "of all tithes belonging and appertaining" to the different Rectories, but there is no supposition of the small tithes of Hale being in any way interfered with, and they could not interfere with the rights of the Vicar, but there are the usual words, "all woods underwoods," and so on. Upon the dissolution of the Abbey, and the Rectory being granted out to these parties, it so remained some time, but eventually came into the family of the Farrants; and descended to a Mr. Farrant and his brother, afterwards Sir George Farrant, and it has remained in that family to the present day.

Now, then, we come to see what evidence we have in early times of the possessions of the Vicarage, after this dissolution of the Abbey and the grant of the Rectory; and in the year 1690 we find a Terrier of the possessions of the Vicarage in these terms: "A true in Terrier of lands, lays, meadows, grounds, and all dues belonging to the Vicarage of Hall Magna in Lyncolnshire, Anno Dom., 1690." And then it describes several acres of land and so on, and then it says "Item, the Easter offerings and all small tithes." That is in accordance with the original endowment which was mentioned in the Roll of Institutions in 1280, and it is not unimportant that at this time, 1690, the Terrier is signed by John Edwards and Edward Gall, who were the Churchwardens of the parish, and who would therefore know what were the rights of the Vicar, who was entitled to "Easter offerings and all small tithes;" and it is signed also by the Curate of the parish, that is, the Curate of the Vicar. The Vicar I suppose had put a Curate in at the time, and it was signed by him and the two Churchwardens.

MR. MANISTY.—It is not signed by the Vicar.

MR. BOVILL.—No, but it is so much the stronger: he could have no interest to misrepresent his right. So things remained therefore till 1690, but in 1690, and whether by the Curate or Vicar is immaterial, but in 1690 you have the Terrier I have read, signed by the Curate, and signed by the Churchwardens, who state he was entitled to "the Easter

offerings and all small tithes." Now from 1690, there seems to have been some sort of arrangement attempted between the Vicar and the parishioners, and in 1699 there was a large portion of common and open land in the parish; an enclosure took place; and at that time the parish desired to give to the then Vicar a certain portion of land instead of their paying him the tithes, and the then Vicar, whose name was either Seaton or Deacon—it is not quite clear on these ancient rolls, but he made an arrangement by which he agreed to take twenty-three acres of land; and that will appear by these documents. He could not bind his successors, he could not deprive them of their rights, and consequently, when his successor came to be Vicar, a person of the name of Parke, he would not agree to this transfer, he would not give up his right for the 23 acres of land, and he made a fresh arrangement with the parishioners, for instead of having the 23 acres of land, he made an arrangement by which he would receive, by way of composition, one penny halfpenny an acre in respect of his tithe.* This arrangement for three-halfpence an acre, stood for a considerable space of time, and we have a Terrier of the year 1707, which was about the time when the succeeding Vicar was making a composition: That Terrier states "The tyth of hemp flax cole and rape did all belong to the Vicar before the late inclosure, and are taken away by a decree upon the said inclosure, yet no consent being given to the said decree on the Church's part, there have been some proposals made and several steps taken for a subsequent composition of three-half-pence per acre for ever in lieu of all small tyths, which composition is not yet completed. The tyth calves foals milk pigs pigeons turkeys geese ducks chickens eggs honey &c., do still belong to the Vicar, also the tyth of all fruits in orchards, as apples, pears, &c., and the tyth hay of several small Home grounds, but are all to come within the composition aforesaid, which is to be perpetual when confirmed under the broad seal."

Therefore, in 1707, the then Vicar was making an arrangement for three-half-pence an acre for all his small tithes. That is in 1707. So matters remained, and the succeeding Vicars seem to have been satisfied to receive the three-half-pence an acre until the year 1813. In 1813 there was a gentleman of the name of Bingham, who was Vicar of the parish. A change had taken place in the condition of the parish, and he was not satisfied to receive this composition of three-half-pence an acre, and accordingly, in 1813, he instituted a suit in the Court of Chancery for the purpose of obtaining the tithes in kind. Opposed to that were the parties who represented the landowners, and one of them, being a tenant of Sir George Farrant the lay Rector, set up these two agreements, and said, the Vicar was not entitled to his tithes in kind because there was a composition made in the year 1699 by giving the Vicar 23 acres of land, and they also said that that was not a void agreement, (the agreement by the Vicar Mr. Parke of three half-pence an acre,) that it was a valid agreement, and that as the agreements had been acted upon, he was not entitled to his tithe in kind. Now the tithes that

* Here is the usual omission of the other 23 acres in Little Hale.

were claimed at that time and were not admitted, were the tithes in respect of hay, wool, and lambs. They did not object to the tithes on the other things, but what the landowners objected to was, the claim to the tithe hay, wool, and lambs. Then on the part of the landowners, (there were several of them named in the suit), they set up three answers. First, they said, the Vicar was not entitled to the tithe in kind, for there was an agreement in 1707, by which he was to receive three half-pence an acre, which they said had been received for a hundred years without being questioned; and they said, "You, Mr. Vicar, are not entitled to these tithes at all—you are not entitled to the tithe of hay, you are not entitled to the wool, you are not entitled to the lambs, they belong to the Rector," and one of the principal defendants was tenant to the lay Rector, who was entitled to the great tithes.

Now, then, in that suit, the matter was discussed, the facts were gone into, and a Decree was pronounced in the Court of Chancery, and it was found that the agreement of 1699 was not binding upon the Vicar, that the agreement of 1707 was not binding on the Vicar, that the Vicar was not entitled to the tithe of hay, but that he was entitled to the tithe of wool and lambs; that being the question which is now before you. Gentlemen, that was in the year 1813. The suit began in 1813, and the decree was pronounced in 1817, so that there was ample time in which to investigate this matter; and the decree was pronounced after such investigation in 1817,—a decree which affirmed the right of the Vicar to the tithe of wool and lambs, and to take it in kind; and in 1850 the Tithe Commissioners found that all tithes were payable in kind. Well now, the landowners and the occupiers failing in the suit, and the right of the Vicar being established to take wool and lambs, Sir George Farrant, being the lay Rector, preferred the chance of trying to wrest them out of the Vicar and to take them for himself; and in 1819 he filed a bill to get them from the Vicar, and claiming them for himself; and it was set up as against him that if he had the right, there was a composition of a shilling an acre, the church is not served by you, and you cannot be entitled to it. The matter was discussed, and eventually his bill was dismissed, and with costs, and so the Vicar remained in possession. They were not satisfied with that—there had already been two suits instituted, one in 1813 which was decided in 1817 in favor of the Vicar, for wool and lambs, and a suit in 1819 by the lay impropiator against the Vicar, who was also an occupier, which was dismissed with costs; and then (in 1821) the parties representing the landowners, and who now are represented by my learned friend Mr. Manisty, they again tried to set aside the decision of 1819—they filed a fresh bill, *Dawson v. Bingham*, which was in the nature of, and which is called, a bill of review, stating that since the former decree they had discovered fresh evidence, that they had discovered this grant of James the First, which by the bye I think proves nothing, and they had some fresh documents in their possession, which I suppose we shall have brought forward to-day. It was a suit for re-hearing on the alleged fresh evidence. The Vice-Chancellor dismissed the application, and

again with costs, and so again the right of the Vicar was established. In August, 1821, they went before the Lord Chancellor. The application to the Vice-Chancellor was I think in March, 1821, and they appealed to the Lord Chancellor in August, to have the matter re-heard, on what they said was fresh evidence. Again the bill was dismissed with costs, and again the right of the Vicar was established. It may be as well here to refer to the case and the ground of the decision in *Dawson v. Bingham*, in *Jacobs' Reports*, page 243: LORD ELDON says "It seems to me that the Vice-Chancellor was quite right. If circumstances of this kind are to form grounds for bills of review, these applications will be instant and eternal. I say nothing as to whether these matters could be evidence or not. The question is only whether they are to be made the foundation for a bill of review. The Vicar I suppose must have made his case thus, that he had received all small tithes which had been paid, which the Court of Exchequer has held *prima facie* entitled him to all small tithes. It has been said there was an agreement to pay a composition in lieu of Rectorial tithes, and that it appears from documents, they were included in the Rectorial tithes; They ought to have searched for the documents and then there would have been a good defence, but they had not searched. It is not a case of a search made and miscarriage in that search, but it does not appear there was any search at all." Petition dismissed, with costs.

Now, gentlemen, you are well aware there are many cases where rights have to be decided, such as rights of way, and rights to tithes, and a variety of matters, where the documents are brought before a jury, and the thing is looked into, the matter is decided, and there is an end of it; and there ought to be an end of it, for things cannot go on for ever. In 1817 a decree was pronounced, and also in 1821, on two different occasions, and the applications refused; in 1821, the application was dismissed and with costs, and upon that the landowners paid their tithe—they paid up their arrears in respect to the wool and lambs. I shall call before you a lady, the daughter of the late Mr. Bingham, who will prove that her father was residing at Gosport, near Southampton, but he went down to Great Hale to receive his tithe. He went there and received upwards of £3000 arrears, for this very tithe of wool and lambs, for the same which the landowners are now saying the Vicar is not entitled to.

That is 43 years ago, and they are now seeking to re-open the very question:—the parties have paid up the arrears, everything seemed to be settled and decided, they have paid for their wool and lambs to the Vicar, the decree was against them, though they urged the Vicar's right was at an end; it was decided by the Court that these agreements were not binding or valid, and consequently that the parties must pay their tithe of wool and lambs; they paid up their arrears, and the landowners afterwards entered into agreements of composition where he was willing to take certain payments as composition for his tithes, and some were compounded for at so much an acre. But after a few years, in

some cases the landowners objected to bring in their tithe of wool and lambs. The Vicar, Mr. Bingham, who became Vicar in 1796, was then a very old man :—he was worn out by litigation, and half ruined by it. It is true he had got his arrears of £3000, but with all that he was a poor man. I think you will agree with me that three suits in Chancery extending over these years, was enough to ruin any man ; and though the arrears were large, yet he was not in a situation to enter into any further litigation. Then came the Tithe Commutation Act, passed some years before 1850—the enquiry taking place previous, the award was made in that year. Now of course the first enquiry in all these matters was, what tithes are payable in kind, and what are not payable in kind, and all parties interested would of course have the power of appearing and of being heard before the Tithe Commissioner.

CHIEF JUSTICE ERLE.—If I remember right the Tithe Commissioners did not decide the question between a Vicar and a party. They could decide a rent charge was payable, but not by whom. I do not think the tithe rent charge will at all help either of you in the litigation now before you.

MR. BOVILL.—It is material, my Lord, in one respect—it is very material in this, that the award states that the tithes were payable in kind.

CHIEF JUSTICE ERLE.—I suppose Mr. Manisty has some document.

MR. MANISTY.—The landowners are the owners of the tithe.

CHIEF JUSTICE ERLE.—I do not interfere with that at present. Mr. Bovill has got to prove the Vicar has the right.

MR. BOVILL.—It is not a fact that the landowners have the tithe.

CHIEF JUSTICE ERLE.—Nothing can be more plain than your statement makes it at present, but when you come to the tithe award, I know it states the money must be paid, but it does not settle, as far as I remember, to whom it is payable. It is £360 per annum, but we do not know whether it is due to you, or not.

MR. BOVILL.—There is this important matter in the tithe award, which I must call your Lordship's attention to—viz: first, "I find that "all the titheable lands of the said parish are subject to payment of all "manner of tithes in kind:" (He is therefore entitled to the small tithes, so that none of them were absolved :—there is no exception at all, and then follows:) "I find that Sir George Farrant is the impro-
"priator of the great tithes:" Now there is this important finding, "The owners of all the rest of the lands of the said parish are also
"impropriators of all the great tithes arising or accruing upon their
"respective lands. And that the Vicar for the time being of the said
"parish of Great Hale is in possession of the tithes of wool and lamb,
"arising or accruing upon or in respect of all the titheable lands of the
"said parish." Therefore the Vicar, as I have shewn you, was a person who was endowed with all the small tithes ; and in 1690 he was found to be entitled to all the small tithes ; Then you find there is a sort of arrangement and composition. In 1817 the Vicar gets a decision in his

favor that he was entitled to all the small tithes of wool and lambs, upon which decision there is a payment of the arrears, and compositions follow; and again by the award of 1850 you find him to have been in possession of the tithe; and therefore when a man has asserted his right, and is in possession of it, then I think it lies upon other parties to show he was not lawfully in possession of it. Now gentlemen we will see whether my learned friend can make out anything like a case, approaching to a case, of a right as against the Vicar. As regards the right to it, the award does not profess to decide it, but it does decide that it is to be paid "*to the Vicar for the time being or to the party lawfully entitled to the same*," but the Commissioner had no power to decide the exclusive right:—he had no power to investigate the decision of 1817. What he did do was to state the Vicar was in possession of the tithe of wool and lambs, to say it was payable in kind, and also to shew the Vicar was in possession of it; and we shew you the origin of his right in 1280, which right was confirmed in 1817, and in subsequent judgments.

Now, gentlemen, so far as the case stands, they are I suppose in a position by law to dispute his title, and they propose to do so. Now, gentlemen, as I understand, what they intend to say is this, they have found out in some of the repositories of ancient records, some old documents, and particularly about the year 1346. Then they say there was some endowment of the Vicarage differently worded to the endowment of 1280. Of course gentlemen we do not come into court without having some intimation of what they are about to say on the other side; and if the case were to rest on what I told you, it would be perfectly unanswerable, there would be nothing for you to try; but I understand they are going to bring forward some old document of 1346, which was accessible to them in 1813. This document was accessible to the parties in 1813. Now then came the Tithe Commutation Act, and now again we are going to raise the question which has been litigated so often before. I understand they are going to put in some document from the time of Edward the Third, of 1346; but if they should attempt to do this to-day, there will be several answers. I will not go into them in detail, but you will find there was some sort of arrangement between the Bishop of Lincoln and the Abbot of Bardney, by means of which they wanted to oust the Vicar out of some portion of the tithes which he had. It was a matter between the Abbot and the Bishop: Some satisfaction was to be made to him: I suppose he was to get something out of it; and the Abbot and the Monks made some arrangement between themselves by which the Vicar was not to have all the small tithes, but the Vicar was no party to it, and the Crown was no party to it. The Crown had a right to present the Vicar when there was a lapse, but neither the Crown or the Vicar was any party to this paper;—and there are some other matters which it is not necessary for me to point out now, but if the document I have mentioned is attempted to be put in, as I understand it will be, there will be some observations to be made upon that. I understand they mean to say, there was some other grant which was lost—some fresh Bull of the Pope.

Gentlemen, there was no fresh Bull produced, and no fresh Bull made:—there was nothing like this Bull in the Bishop's Register, and if there was any Bull at the time, they would have found their Bull.

Gentlemen, it was a common thing at the time to say there was a Bull of the Pope:—to threaten any one with a Bull at that time. That is the first piece of evidence they propose to put in. Then I understand there are several surveys of the reign of Henry the 8th., and the following reigns of Elizabeth, and of James, which at first sight might seem to confirm their notion that the Vicar was not entitled to all the small tithes. No doubt at the time of Henry the 8th, when the Ministers were appointed to make these surveys, which they did with great care, the greater portion of the property belonging to the church was vested in the Crown. It may be these things may appear a little inconsistent with our notion, but there is this remarkable circumstance, that after all these documents, after every one of them, (for of the others we have no notice) but going through the reigns of Henry the 8th, Elizabeth, and James the 1st, long after those dates—then you come to 1690, and then I read to you a Terrier in 1690, which states that the Vicar is entitled to Easter offerings and all small tithes. Perhaps the attempt was made to deprive the Vicar of his right, because at this distance of time it might be well supposed it was almost impossible to unravel all this; but one thing is quite certain, that whatever may have been the motive, here we have it stated distinctly in 1690, that the Vicar is entitled to "Easter offerings and all small tithes." That would seem to be an answer to the documents my learned friend may rely upon, of the time of Edward the 3rd. and Henry the 8th. Then, gentlemen, I am not aware that there are any other material documents that my learned friend proposes to rely upon.

Now, gentlemen, these are all the documents by which they propose to displace the right the Vicar had in 1817. Whether they looked, and could not see them, or were not aware of the expressions which they contained, we cannot know; but, certainly, all these documents were then in existence, and might have been produced. There is a decision in favour of the Vicar's right in 1817, and nobody ever refused to pay him his tithes.

Gentlemen, the present Vicar, Mr. Sugden, was presented to this living in 1858; and he took upon himself every means to satisfy the parishioners of his rights, and that they should know fully about the matter. It is his positive duty, as representing the Church, that its rights should be preserved. On the other side, they say the Vicar is not entitled to this £360 rent-charge. I ask, who is entitled to it? Is it Sir George Farrant, the Lay-Rector? No; my friend says it is the landowners.

THE CHIEF JUSTICE: I am listening to a great deal of what you have been just saying, and I think it will all be required of you, when you come to reply, and when I know for certainty what Mr. Manisty will resort to.

MR. MANISTY : I am in no difficulty : one story is always very good until the other is heard.

THE CHIEF JUSTICE : Would you disclose to us the other documents that Mr. Manisty has the notion of attempting ?

MR. BOVILL : I have not the least notion of what they are.

THE CHIEF JUSTICE : Then we will wait the explanation.

MR. MANISTY : I have no objection to make my speech now.

THE CHIEF JUSTICE : If I know what is contended for on one side, and the other, I can appreciate the evidence as I go along.

MR. MANISTY : It will only be to point out documents.

MR. BOVILL : The only other document that I am aware of is that of 1345.

MR. MANISTY : They had better prove their case, and I will prove mine afterwards.

THE CHIEF JUSTICE : If you have documents that are consistent with the judgment, and the user, and you have in modern times two solemn judgments, and from that time no user—

MR. MANISTY : So opened but not so proved.

THE CHIEF JUSTICE : Are wool and lambs debatable ground between great, and small, tithes ?

MR. BOVILL : No my Lord, all, small tithes.

THE CHIEF JUSTICE : Hay in my experience has sometimes been held debatable ground between great and small.

MR. BOVILL : Lambs and wool, no question at all ; I speak in the presence of my learned friend.

THE CHIEF JUSTICE : Then your early documents come very much in your favour—"all small tithes."

MR. BOVILL : I do not think there was a single doubt raised at all.

THE CHIEF JUSTICE : I do not want to shorten anything that you think will guide us ; you will have the whole field before you, and you will be able to expatiate any case you please.

MR. BOVILL : I desire merely to call your Lordship's attention to a presumption that arises—that is to say, these are small tithes, and the Vicar is in possession of them ; and the persons who claim to disturb him in that right, they must make out a case against him, and the possession, it is said, is nine points of the law ; and the Vicar who is in possession is not to be deprived of it, unless a case is made. If he is entitled to one small tithe, the presumption is, he is entitled to all. We have documents since those I have referred to. I do not think that my learned friend can produce a single document later than 1690, in which it appears the Vicar is not entitled to the small tithes ; and while the Vicar has been in receipt of a large amount, and afterwards receiving a composition (in the composition they do not specify what it is for), and then he agrees to take so much for the one, and so much for the other, now, again, they raise the question under those circumstances—the presumption of law, and the presumption of fact ;

and, on the evidence, I venture to submit to you that the Vicar, being in possession of the tithes of wool and lamb, is entitled to the late commutation, and the £360 ought still to be paid to the Vicar who performs the duty.

THE CHIEF JUSTICE : Are there any of these documents that can be taken ? All the ancient documents have been examined on both sides ; and both sides have got copies of them, I presume.

MR. MANISTY : Oh, yes ; we will give no trouble on either side. There will be no difficulty about it.

MR. ROBERT SWAN, Sworn.

Examined by Mr. White.

Q. Do you come from the registrar's office ?

A. Yes ; at Lincoln.

Q. Have you the custody of the documents in the registry of Lincoln ?

A. Yes.

Q. Do you produce an ancient roll of institutions to benefices, in the time of Oliver Sutton, Bishop of Lincoln.

A. Yes.

MR. BOVILL : All the entries are in latin ; we have a translation of them ; shall I hand your lordship a copy of it ?

THE CHIEF JUSTICE : Have you got a latin copy ?

MR. BOVILL : We have agreed to the translation, my lord ; but here is the latin document itself.

MR. WHITE : Then I will read this translation :—

Reads the Institution of William de Hale to the Vicarage in 1280, and the mem. of the Endowment of 1204 subjoined (vide page 12).

We can prove that search has been made, and no trace of that original endowment is to be found in the registry ; therefore, we offer this as secondary evidence of the endowment.

MR. H. W. HEWLETT, Sworn.

Examined by Mr. White.

Q. Point out that entry, in Sutton's Institutions.

A. " Vicarage of Hale : William De Hale chaplain was, &c."

THE CHIEF JUSTICE: Will you just allow me to ask; is it, according to that roll, "William de Hale on the presentation of the rector St. Quintin, and with the consent of the abbot &c.?"

A. There was an Ecclesiastical rector, and there was an endowment of the Vicarage which made the rectory a sinecure, and the abbot and convent were the patrons, and had the presentation in the first instance.

THE CHIEF JUSTICE: I thought that the patrons of the benefice would present, but it is "William de Hale is presented to the Vicarage by St. Quintin the rector, with the consent of the abbot."

A. They present the Rector, and the Rector seems to present the Vicar, with the consent of the patrons. He could not have presented the Vicar without the consent of his patrons.

Q. You take it virtually that it is a presentation by the abbot?

A. With their consent, although by the nomination of the Ecclesiastical Rector.

Q. Have you known any endowments of Vicarages that are subject to the presentation of the Rector, where an abbey was the patron?

A. Yes, my Lord, but they are unfrequent cases.

MR. MANISTY: I shall have occasion to ask by and bye.

THE CHIEF JUSTICE: I only ask for information. The Vicarage, according to the Norman rule, arose out of the Ecclesiastical bodies, patrons, who deputed one of their own body to do religious services, and at other times appointed him permanently, and endowed him.

A. Yes.

THE CHIEF JUSTICE: If he were Rector appointed to the cure of souls, Ecclesiastical Rector, and he wished to get somebody to assist him in the performance of the religious duties, would that be anything more than an appointment of a Curate with a stipend?

A. Yes, my Lord.

THE CHIEF JUSTICE: It is the first time I have heard of it. I do not remember to have met with the idea you have; an abbot, patron of a benefice, appointing an Ecclesiastic to be Rector of that benefice, and that Rector to exercise the authority of naming a Vicar, and endowing him?

A. It is unusual certainly; but I think I have known such an instance before.

MR. REILLY: Will your Lordship allow me to observe, with reference to the peculiar nature of the arrangement to which your Lordship has referred,—you see the Vicar is not merely a stipendiary curate; because he is to be "instituted and inducted," which makes him fully and completely in seisin of the endowment.

THE CHIEF JUSTICE: Can you help me through the difficulty. I was never aware of an Ecclesiastical Rector creating a Vicarage.

MR. BOVILL: I was going to mention, there is a passage in Eagle on Tithes that I might hand up, or rather I think it will be useful to

read it at this time. He says "The Vicar is one that has the spiritual promotion, or living, under the parson," &c., &c., (reading down to the words "consists of the small tithes.")

THE CHIEF JUSTICE: Nothing can be more familiar to me than all that: This is the first time that I have come across the patrons of a rectory appointing an Ecclesiastic to the rectory, (in which case he would be the parson to do the duty and take all the profits,) and then that single Rector appointing for himself a Vicar; but I beg pardon for intruding this matter here, for it is more a piece of antiquarian inquiry than relevancy.

MR. MANISTY: Your Lordship will see the relevancy in a very short time.

MR. WHITE: Then next is the copy of the grant of James 1st, 4th James, 1607, that we put in. (No. 26, page 25.)

MR. BOVILL: It is not necessary to read it all through, but to call your Lordship's attention to this, that it is a grant of a *great many* rectories: followed by the usual general words, "All woods, under-woods, &c., tithes of corn, grain, hay, *wool*, and *lambs*," and so on, the words not being applicable to this rectory in particular, but to all the rectories. I read those general words because that is what they (the landowners) rely upon, as I am told.

THE CHIEF JUSTICE: I do not know that you would draw anything more from this, than the grant of the rectory of Hale.

MR. WHITE: Now Mr. Swan will you produce the terrier of the date 1690. (No. 30, page 27.)

Mr. Hewlett proceeded to read this terrier.

MR. MANISTY: Let me look at that. Do you see the handwriting? Is the handwriting in the body of the document the same as the Vicar's signature?

A. I think it is.

Q. The document itself is in the handwriting of the Vicar?

A. Of Benjamin Deacon, it looks very like it, and I think it is.

MR. BOVILL: Your Lordship had better see, it is very plainly written, and there is no difficulty in reading it.

THE CHIEF JUSTICE: You call it "Vicar," have you got the roll of Vicars.

MR. MANISTY: We have several.

THE CHIEF JUSTICE: But you do not know that he was Vicar.

MR. MANISTY: We do not, my Lord: we find *afterwards* that he was Vicar; soon afterwards.

MR. QUAIN: Your Lordship will find that the word "Curate" in those times was used indiscriminately.*

* "Bishops and Curates and all, &c."

THE CHIEF JUSTICE: According to your experience does the Vicar sign "Curate" at all.

A. No, my Lord.

MR. MANISTY: We shall find afterwards that same gentleman became Vicar if he was not so then.

MR. WHITE: Have you the terrier of the date of 1707?

A. Yes. (The Terrier of 1707 produced and read. *Vide* page 33.)

THE CHIEF JUSTICE: The term "small tithes" does not appear to be in this document.

MR. BOVILL: Yes, my Lord, three half-pence for ever—your Lordship sees it is, *for all small tithes*.

MR. WHITE: Now, have you the institution of Richard Parke to the Vicarage, who signed that terrier, date 1700.

MR. MANISTY: You may take it that he was Vicar.

MR. WHITE: Now, my Lord, I propose to put in an office copy of the decree in the suit of *Bingham v. Everard*, and others.

THE CHIEF JUSTICE: What is the date of it?

MR. WHITE: It is 1817, the 14th of November.

MR. MANISTY: Are you not going to put in the other things?

MR. WHITE: It is *Bingham v. Everard*, and others: there are several others.

MR. MANISTY: Before that document is read, I am not going to take an objection against its being used for certain purposes, but we are no parties to it or privy to it.

MR. BOVILL: It is against landowners.

MR. MANISTY: It is against the tenants of certain farms. I have no objection to this being put in as proving that arrears were paid; but as to this being evidence against me, that I object to.

THE CHIEF JUSTICE: Not as a judgment. The taking in kind, and for a great many farms within the parish, the vicarial tithes, by the Vicar, of nineteen out of twenty farms, would be evidence of the right to the twentieth farm; and a judgment in favour of the Vicar claiming that right over six farms, is admissable in evidence, as strong evidence, of vicarial right, enforced by a judgment against the occupiers.

MR. MANISTY: And, as such, I do not object; but I object to its being carried further.

THE CHIEF JUSTICE: I believe that is so, Mr. Reilly; is it not? It is not *res judicata* between parties who are privy.

MR. REILLY: We do not put it in that way.

MR. BOVILL: I think this had better be read, it contains a statement, it is the history of the whole thing. It would be better to have it read. We will give your Lordship a copy of it.

MR. MANISTY: Here, again, I believe I am correct in saying that all the groundwork of the decree is only looked to by your Lordship, to see that the decree is properly evidence. Nothing in the bill or

answer is evidence against me. It does satisfy your Lordship that the decree may be received, because there is a decree.

MR. WHITE: We put this in to explain the decree. There is a decree; and the bill and answer are recited in the decree, and we propose to read the decree.

MR. MANISTY: I have no objection; but it is not evidence against me.

CHIEF JUSTICE ERLE: My notion is, that Mr. Manisty objects, that the bill recited in the decree is only admissible in evidence to shew what right the party claimed.

MR. BOVILL: We do not offer it for any other purpose; but what we want is to shew what were the questions raised in that bill. We do not ask for any benefit from the statement of it as evidence.

MR. MANISTY: As long as that is not evidence against me, but for the purpose of shewing how the question was raised, be it so.

MR. BOVILL: Then be it so.

CHIEF JUSTICE ERLE: As far as I and the jury are concerned, the abstract of the documents, by a man who is master of the pleadings, will give us a great deal more knowledge.

MR. BOVILL: My friend will follow me. It says "the Vicar was inducted, in 1796, to the Vicarage; and that, by ancient endowment or by prescription, or immemorial usage, or otherwise, he was entitled to take all manner of tithes to the Vicarage belonging, and amongst others hay, wool, and lambs, and all other small tithes whatsoever," and so on. Then there is the statement of the parties on the other side:—and then it sets out certain matters of agreement of 1699, for an allotment of 23 acres in lieu of tithes, which it says was in lieu of tithes payable in respect of the enclosed lands; and that it was not binding on the Vicar: and then he refers to this composition of 1707 of a three half-pence per acre, in this manner, "in 1707 Richard Parke, then Vicar, then objected to submit to the said decree and insisted on being paid a composition and satisfaction for the tithes, and the owners and occupiers agreed to pay three half-pence per acre in lieu of the small tithes due to the Vicar."

CHIEF JUSTICE ERLE: It admits, first of all, an attempt for composition, that was never perfected: and then in 1707 there was an attempt at composition at three half-pence an acre, but that it never became binding upon him. The Vicar for the time being and the landowners, agreed to pay three half-pence an acre for the small tithes, but it did not become binding on the succeeding Vicar.

MR. BOVILL: That is what the Vicar says in his bill; and Mr. Bingham put an end to it.

CHIEF JUSTICE ERLE: "I now demand tithes in kind."

MR. BOVILL: "I now demand tithes in kind,"—quite so. Then came the answer of the defendants set forth in the decree. (It is for the single value of the tithes, amongst others, for lamb and wool.) After

referring to the right and so on, the defendants in their answer, then set up, first of all the arrangement of 1699, (the Inclosure Decree) and they say there was a decree in Chancery in a suit instituted between Sir Edward Hussey and the Vicar for the performance of an agreement, and that it was established as against the then Vicar. That is what the answer set up—not only that there was an agreement in 1699, but a suit against the then Vicar, and that there was a decree of performance of that agreement. Then that there was an agreement with Parke to pay a composition of three half-pence per acre in lieu of all small tithes whatsoever—and then they say that the predecessors of the plaintiff Bingham, and also the plaintiff Bingham, had accepted, taken, and received a composition of three half-pence an acre, and also the allotment, from 1707 to 1813, without any alteration whatever; and they rely upon that. Then the next ground they set up is, the allotment of land, and the composition for old Inclosure, and that neither the allotment, or composition, was intended to include the tithe of hay, wool, or lambs, because such tithes were never payable to the Vicars, or any of them, except as aforesaid, and so on: “And that before making the said decree, or at any other time, no tithes of hay, wool, or lambs were ever paid or demanded within the said Vicarage, except as aforesaid, but that all lands in such parish were and had been from time immemorial wholly free and exempt from the payment of tithes of such things last mentioned.” The defendants insist upon such exemption.

CHIEF JUSTICE ERLE: Total exemption.

MR. BOVILL: Total exemption of wool and lamb: Whereupon and upon debate of the matter, and so on, it was ordered “That so much of the plaintiff’s bill as sought to have an account and payment of single value of the tithes of hay be dismissed.”—Dismissed it as to hay, but refers it to the master “To take an account of the single value of the tithes of lambs, wool, and agistment, and of all other small tithes whatsoever, and that what should be found due by the master, should be paid to the plaintiff, and that the defendants do pay the plaintiff his costs. Referred to the master, and decree that they should pay the single value of the tithes.

CHIEF JUSTICE ERLE: The master found £3000 due.

MR. BOVILL: It would not be against these defendants alone, there were various occupiers.

MR. REILLY: Now we put in, *Farrant v. Bingham*, That was a suit by George Farrant and Thomas Farrant, against Richard Bingham and Thomas John Fountain, Bill filed 3rd February, 1819.

MR. BOVILL: Bingham being the Vicar, and Thomas Fountain only an occupier of lands in the parish. Perhaps my Lord without formally going through this document, if I state from my own note what the proceeding is, it will be sufficient. This bill states the plaintiffs are the impropriate Rectors of Hale Magna.

MR. MANISTY: My Lord, I will take your Lordship’s opinion here. This is a suit instituted by a Mr. Farrant one of the impropriate Rectors—it is between Farrant and Bingham.

MR. BOVILL: There is an occupier.

MR. MANISTY: This is not a suit instituted by the Vicar as in the last case, to assert his right, but it is a suit instituted by some third parties against the Vicar disputing his right.

MR. BOVILL: It is a suit against the Vicar and an occupier, by the lay impropiators; and those lay impropiators, Sir George Farrant and Thomas Farrant, claim that they should be paid the tithes—therefore it stands precisely on the same footing.

MR. MANISTY: There is nothing to be said, but whether it is evidence or not.

CHIEF JUSTICE ERLE: If it amounts to this: you, the Vicar, was in the possession of the tithes of wool and lambs: this incorporeal hereditament became a corporeal one:—if the question were, whether B was entitled to Black acre:—you see he says “I and those under whom I claim had it for a good many years, and amongst others one Farrant in 1819 came to turn me out, and instead of turning me out I kept him off?”

MR. MANISTY: The difference between the two cases is this, the one party who claims the tithes says to the other, “You cannot come here and claim tithes if you be the lay impropiator; because if you have the impropriate tithes, and if these are rectorial tithes, and if you are entitled to them, *you are compensated by the things you already have.*”

MR. BOVILL: Take it so.

MR. MANISTY: And not having delivered up the tithe allotments, he could not claim: Further, he was only one of several entitled to the tithes.

CHIEF JUSTICE ERLE: Does Mr. Farrant allege that Mr. Bingham prevented him from having the wool and lambs?

MR. MANISTY: He makes him a co-defendant, for he says he claims them.

CHIEF JUSTICE ERLE: I suppose Mr. Bingham in his answer says, “true it is they wanted me to give up wool and lamb, but I am entitled to them.”

MR. MANISTY: No doubt he insists upon this, but the matter is simply this, “You (the plaintiff Farrant) have no locus standi here, for assuming you are right, these are rectorial tithes, and you have got the land that satisfies you for all the rectorial tithes; and you never can put your claim forward here in that form, for if you are right the claim is compensated for.

CHIEF JUSTICE ERLE: It is not very strong, but it is admissable.

MR. MANISTY: I believe it is better to have the whole of the facts out.

MR. BOVILL: His bill concludes by praying “That an account may be taken under the direction of this honourable Court of the number of sheep kept and so on.”

MR. REILLY: Perhaps I may state the bill from my note.

CHIEF JUSTICE ERLE: If you please.

MR. REILLY: The plaintiffs begin by stating their case; that they are the inappropriate Rectors of Great Hale, and are entitled to tithes of wool and lambs, and to the corn, grain, and hay, and that they have been duly rendered to them. That the defendant FOUNTAIN is an occupier of land in the parish, and it then charges that the tithe of wool and lambs has been taken away from the plaintiffs; and never rendered to their use, or were taken by Richard Bingham; and that there is evidence the tithes of lambs and wool do not belong to the Vicar; and then it proceeds to charge that the tithe of lamb and wool did not belong to the Vicar, and prays an account, as against Fountain the occupier, of the number of sheep fed and depastured by him, and an account to be taken of the lambs and wool; and as against the Vicar, that the plaintiffs may be declared entitled to the tithes. Then, my Lord, answers were put in both by the defendant Bingham, and Fountain, and the answer of the defendant Bingham may be said to be nothing more than a statement of the former bill, and a repudiation of the agreements.

CHIEF JUSTICE ERLE: The decree was, that the bill be dismissed with costs.

MR. REILLY: There was an answer by Fountain.

CHIEF JUSTICE ERLE: Answer by Fountain, that his tithes are not due to the Rector, denying the right of the Rector. I suppose for all purposes that will be enough,—denying the right of the Rector.

MR. BOVILL: It admits the right of the Vicar.

MR. MANISTY: Can that be considered to be evidence against me?

MR. BOVILL: Reputation.

MR. MANISTY: Reputation! It cannot be evidence against me.

CHIEF JUSTICE ERLE: Answer by Fountain denying the right of the Rector—decree against the Rector with costs.

MR. MANISTY: Where do you see the part that admits the right of the Vicar?

MR. REILLY: I beg your pardon that is not so.

CHIEF JUSTICE ERLE: It is of no consequence.

MR. BOVILL: I will tell you what it is, let us have no contest about it, but, "*in consequence of said decree* (of 1817,) he believes that the tithes of wool and lambs appertained to the vicar of said parish."

CHIEF JUSTICE ERLE: Now Mr. Reilly what passed in 1821?

MR. REILLY: On the 27th of June 1821, "this case coming on to be heard, and so on," (reading). The petition was dismissed with costs—that was the decree: That was the termination of the suit of Farrant and Bingham.

CHIEF JUSTICE ERLE: Then comes an attempt by way of an appeal.

MR. REILLY: Yes in the other suit. One of the defendants in the other suit, of Bingham and Dawson, was William T. Dawson, and he presented a petition in the same suit in 1821. He wanted,

by way of supplemental bill, to bring forward other evidence in support of the plea he was making, or was about to make, in the original suit. The petition came first before the Vice Chancellor, and then before the Lord Chancellor by way of appeal. The order of the Lord Chancellor is dated the 23rd of August, in the same year (1821).

CHIEF JUSTICE ERLE: Dismissing the petition with costs. I suppose the object of the petition was, for leave to file a supplemental bill of review in the old suit.

MR. REILLY: Yes, the object of it was to produce fresh evidence in support of the plea in the same suit.

CHIEF JUSTICE ERLE: Still, all that you want is, to shew the attempts made in Chancery to displace the Vicar from the receipt of tithes of wool and lambs, that all the attempts failed, and that they had to pay the costs of each one of those attempts.

MR. MANISTY: And that we still refused to pay it.

CHIEF JUSTICE ERLE: You are coming by and bye, Mr. Manisty.

MR. REILLY: The whole substance of the petition is in the last three paragraphs, &c.

CHIEF JUSTICE ERLE: Since the decree was made, they say, we have found ample evidence. Then the Chancery Judges were of opinion they ought to have found it before, and dismissed it with costs—shewing therefore that the landowners, under the circumstances then known, were to pay tithes of wool and lambs to the Vicar, that is the sum total of it.

CHIEF JUSTICE ERLE: Then there is an end of your documentary evidence, Mr. Bovill?

MR. BOVILL: Yes.

MR. MANISTY: I will just ask one or two questions of Mr. Hewlett about the documents.

MR. HEWLETT recalled.

Cross-examined by Mr. Manisty.

Q. Have you made a search for documents in the Bishop's registry at Lincoln?

A. Yes.

Q. And you have produced here the institution of 1280, with the memorandum of 1204?

A. Yes.

Q. You also made a search you say for other documents?

A. I did.

Q. I believe Mr. Hewlett you have had some experience in this sort of case.

A. Yes, I have.

Q. Have you met with instances of Vicarages, where there was an Ecclesiastical Rector, the Vicarage being again united with the Rectory?

A. Where there was a Vicarage?

Q. Where there was an Ecclesiastical Rector, and you find for a time he relieved himself from his duties by getting a Vicar appointed, have you met with instances where you find the Vicarage and Rectory joined again, the Rector again taking upon himself to perform the duties?

A. No.

Q. Have you not met with it in this very case?

A. In this case?

Q. Yes, did you not find an order uniting it again?

A. No. (*Mr. Hewlett seemed confused.*)

Q. In the Bishop's registry?

A. No—the Act of consolidation?

Q. The Act of consolidation?

A. I found something in a calendar, in a roll, referring to some consolidation of the Rectory and Vicarage, and I looked for the document and could not find it.

Q. Never mind, you found the endowment of 1280 on which there is a memorandum.

MR. BOVILL: I must see the document—this consolidation.

MR. MANISTY: You shall have it.

MR. BOVILL: Dont take this as evidence.

CHIEF JUSTICE ERLE: Mr. Hewlett's answer is, "I found in a calendar, something on the consolidation of the Rectory and Vicarage, after 1280.

THE WITNESS: But I could not find the document itself, to which the calendar referred. I searched for it but could not find it. I was very anxious to find it, if I could.

CHIEF JUSTICE ERLE: I do not take that to be any evidence of anything.

MR. BOVILL: If it goes down upon the note in this way.

MR. MANISTY: I am not going to leave it in this way.

CHIEF JUSTICE ERLE: Suppose I write down at the side "Calendar in doubt." I always give a Counsel credit for not making me write down what is in itself not evidence, unless he is going to found something on it. It is not evidence in itself. I have put a marginal note, "Calendar in doubt."

Q. (BY MR. MANISTY:) Did you make any search in the Bishop's registry for any subsequent endowment?

A. I did.

Q. After the appropriation of this church to the monastery?

A. I found the appropriation, and, subsequently, I think the next year, I found an endowment of this Vicarage.

MR. BOVILL: This will not do as evidence. I opened there were these documents. I was not going to put them in.

CHIEF JUSTICE ERLE: Mr. Manisty himself may put them in.

MR. BOVILL: I opened them, and my learned friend is asking Mr. Hewlett about them. I know very well the course my friend is taking. If my friend wishes to put in these documents, he will put them in, but he cannot put them in in this way.

CHIEF JUSTICE ERLE: I am not going to take speculative evidence. I am carefully waiting. As I tell you, I give Mr. Manisty credit for having a purpose; he is not beating the air.

Re-examined by Mr. Bovill.

Q. I believe you did not communicate to me the other fact—some entry in a calendar?

A. No.

MRS. ROBINSON, Sworn.

Examined by Mr. Bovill.

I am a widow now; and a daughter of the late Mr. Bingham, who was Vicar of Great Hale; he resided in Gosport; and was Incumbent of the Church of Holy Trinity at Gosport; I remember the proceedings in Chancery; and the decree being made in favour of my father in 1817; after the decree I accompanied my father to Hale, and was present when the farmers and land occupiers paid the arrears of their wool and lamb tithe; I took the account sometimes, and sometimes my father took it; the book marked "T," is a book in which I entered the amounts that were paid; they are in my handwriting; the various tithes were entered in the book, and paid at the dates that are there mentioned.

MR. BOVILL: My lord with your permission I will just read two or three of them.

WITNESS: They are made to come to £2937 12s 6d. Received 27th Oct. 1818, £14 17s. (The witness here read several entries of payments.) Of Faulkner, for arrears, £222. Of Hill, ditto, £5, &c.

CHIEF JUSTICE ERLE: That I should think is sufficient. If you have got £2937, I should think it was sufficient. The most reluctant landowners you had, fought you to the end.

WITNESS: Dawson would not pay; he was tenant to Sir George Farrant, but after the final decision by the Lord Chancellor, he paid up his arrears.

MR. BOVILL: Were you down at Hale again in 1823?

A. I was. The tithes of wool and lamb were then set out in kind by some of the occupiers. In 1823 my brother Joseph Bingham received the tithes: he is dead. The account book produced is in the hand-writing of Nicholas Buck, a collector, now dead.

CHIEF JUSTICE ERLE: How many years was it paid, Mr. Manisty?

MR. MANISTY: My Lord, I believe the first movement at resistance was in 1823; the Vicar states it so himself.

CHIEF JUSTICE ERLE: Paid in 1820, '21, '22, and 1823.

MR. BOVILL: Then 1827 and '28 we could carry it down to. Look at the book, Mrs. Robinson; whose writing is it?

A. My brother Joseph's.

MR. BOVILL: Now we have got 1827 (reads "Mr. Manlove for thirty-one lambs, £27 11s.").

Q. (By **CHIEF JUSTICE ERLE**) Mrs. Robinson, can you tell what lambs these were?

A. I was not there at the time.

Q. How many sheep did you keep on your fifty-seven acres of glebe?

A. Some of it was arable land. I do not know how many: I know there were a number of sheep.

MR. MANISTY: It does not shew that every lamb was a tithe lamb. All that appears here is this—the person who keeps the book sold some lambs for £27 11s.

Q. (By **MR. BOVILL**) In 1823, did they set out the lamb and wool in kind?

A. To the best of my knowledge some did, and some did not.

Q. Those that did not, what did they do?

CHIEF JUSTICE ERLE: Set him at defiance.

Q. (By **MR. BOVILL**) In what year did your father die?

A. In 1858.

Q. As to his collecting these arrears, was he very much distressed in his circumstances by the litigation that had taken place?

A. Very much.

Q. And, after the Commutation took place in 1850, was he in a condition, in point of means, to contest the matter?

A. No.

Q. He was a very old man when he died?

A. In his ninety-fourth year.

Cross-examined by Mr. Manisty.

Q. Your father, you say, resided at Gosport; was he a Rector, or Vicar?

A. It was an Incumbency—Incumbent of the Church of Holy Trinity.

Q. And I believe he was one of the Canons of Winchester?

A. Of Chichester.

Q. And Vicar of Hale?

A. Yes.

Q. (BY CHIEF JUSTICE ERLE): Was he one of the Residentiaries?

A. He was not.

CHIEF JUSTICE ERLE: One is worth about five pounds a year, and the other is a good establishment. A good many Canons of Chichester have but about £5. I was going to say, if *his means* were, a question, my remarks are pertinent to it.

Q. (BY MR. MANISTY): Did you reside chiefly at Gosport?

A. I did.

Q. When did you go to Hale?

A. In May, 1818.

Q. And you continued there 'till November. Did you return again in 1823?

A. I was there again in 1823, for two or three months.

Q. I dare say you are aware that meetings took place among the farmers in that year, with a view to resist your father's claim?

A. I do not remember.

Q. After 1823 was not the claim of your father almost universally resisted in the parish?

A. It was I believe by many, in 1824.

Q. And from that time till the day of his death he never got any tithe of lamb or wool from any one?

A. He did, I believe, from some.

Q. Was it not of very small amount?

A. Not that I know of.

Q. Did he get anything after 25 or 26, from anybody, for wool or lamb?

A. Some went on, on agreements, and paid lamb and wool.

CHIEF JUSTICE ERLE: What Mrs. Robinson means is, they paid on agreements for all small tithes, including lamb and wool, and many of them went on after 1823 paying the same amount.

MR. MANISTY: No, no, my Lord, it is not so.

Q. Is it not a fact that after 1828 not one farmer would pay?

A. There were a number of agreements that did go on.

Q. Are they agreements in writing?

A. I believe they are.

Q. Let me know any agreement, after that time, for lamb and wool, if you can shew me any.

MR. BOVILL: An agreement once made would go on.

CHIEF JUSTICE ERLE: That was the effect of my question: taking the good with the bad he would rather not open the agreements. I understood Mrs. Robinson they went on paying the same amount.

MR. BOVILL: Now I will go to payments under agreements. I should like to have the payments under the agreements.

CHIEF JUSTICE ERLE: I cannot see any great cogency in this, in this state of things.

MR. MANISTY: We want the fact that, substantially, there was no payment after 1828. My friend has looked over these agreements, they are all in 1818, except one for 1820.

MR. BOVILL: We will go on tracing these same payments year after year, we will begin with 1818.

MR. MANISTY: Up to 1824 I do not deny it.

CHIEF JUSTICE ERLE: It has been repeatedly admitted they are paid in 1820, 21, 22, and 23.

MR. MANISTY: You got nothing after 1828—you got a few now and then to drop in a five pound note.

CHIEF JUSTICE ERLE: I would propose, Mr. Bovill, that your Solicitor should take a piece of paper, and state the payments made by every one after 1823.

MR. MANISTY: I will give him down to 1824 if he likes.

CHIEF JUSTICE ERLE: That will be better, for that is an intermediate thing. That is pretty nearly your case, Mr. Bovill.

Re-Cross-examined by Mr. Manisty.

Q. I understand after 1824 the claim was generally resisted by the farmers?

A. By many of them it was, but not by all.

Q. But afterwards by all?

A. Because their landlords insisted upon it: not by all, as their agreements state.

Re-Examined by Mr. Bovill.

Q. Your father was not at the time able to enter into litigation?

A. He was not, his means were so contracted by what he had gone through, that he was unable to carry it on.

(The witness withdrew.)

MR. BOVILL: Then we put in, the Award under the Tithe Commutation Act, of 1850 :—I have read it to your Lordship. Then, my Lord, it is admitted that Mr. Sugden was inducted Vicar in 1858—and then all formal matters as regards the distress and so on, are all admitted; and it is admitted the distress was made on new inclosures, *i.e.* new inclosures of 1699.

My Lord, that is the case on behalf of the defendant.

PLAINTIFF'S CASE.

MR. MANISTY: May it please your Lordship, Gentlemen of the Jury, I do not think it has ever fallen to my lot to have been in a case in which it was so necessary to hear both sides; because, if the case was as represented by my learned friend, Mr. Bovill, commencing with an endowment of the Vicarage, followed up by payment of the tithes—beginning with that and then followed by payment of the tithes claimed, down to the present Tithe Act,—I think I might at once close my papers, and you would not listen to me for a single moment. But, gentlemen, I do complain, and I think you will be of opinion that I have a right to complain, that you should be in that box, and be asked to pronounce an opinion on evidence as defective as ever was laid before a jury :—when the only question in issue was a real question of right, on documents known to both parties to exist—that you should have a few picked out here and there, to make up a story, consistent enough, but as far from being the real and true state of the case, as anything I ever heard in the whole course of my life. That was why I asked the question of Mr. Hewlett, whether or not he had made further searches. No doubt, in Chancery, the landowners failed, and there was an erroneous opinion given that the Vicar was entitled to the tithes of wool and lambs, and it was not until the landowners bestirred themselves, that they ascertained that the right to the composition for wool and lambs did *not* belong to the Vicar.

That in the year 1280 there was a Vicarage, and that the Vicar of that day may have been entitled, and probably was entitled, to the tithes of wool and lambs, I do not gainsay; but, inasmuch as the tithe of wool and lambs had not been paid to the Vicar, and some document had passed, some agreement or arrangement with the Vicar had been made, which the landowners thought, and I believe they were entitled to think, relieved them from the payment of tithes, they, in answer to the Vicar's demand of 1813, set up what in that day was thought to be a

good defence, but which afterwards, by several judgments of the superior Courts, was found to be in law no defence at all. Then it was the landowners stirred themselves in order to ascertain what their real rights were; and when I detail to you this most perfect series of documents, tracing down the real and true state of the case, filling up the spaces passed over at one leap by my friend, and shew how it came to pass that the Vicar was not entitled to these tithes, when I shall have related to you what is the case, and shall have shewn the documents on both sides, you will then say whether my learned friend has told you the true state of the case or whether I have.

Now, gentlemen, taking up the case where my friend began in 1280, it appears that at that time there was a Rector and a Vicar, and that the Monastery of Bardney either was, or was supposed to be, the patron of the church. Now that was in 1280; and to the institution of a Vicar at that time, there was a memorandum attached, of some former endowment, to which I have made no objection, because it comes out of the same custody as that from which I shall have occasion myself to produce several documents.

Then at that time the Vicar was entitled to all the small tithes, and I am not going to contend for a moment that lambs and wool are not small tithes: I am not going to contradict that, for, as my friend said, 'that will be no question here for you:' but this was found, and it is important, viz., that the Vicarage had been "a long time vacant." However, it was then filled up, in 1280. Now, gentlemen, I will put before you a series of documents that will explain the whole case: the first I open, as bearing on this question, is a document very well known, called, *Pope Nicholas' Taxation*. It was a taxation of all churches at the time of Edward the 1st., 1291; and as far as that goes, and I give my learned friend the benefit of it, there was then a Vicarage: and the taxation gives the following valuation of it:—"The church of Hale" (that will be the Rectory), "besides a pension, is valued at 54 marks: The pension of the Abbot of Bardney in the same is 1 mark: the Vicarage of the same is valued at 15 marks." So that it will be found, in 1291, there was a vicarage. Now I will concede to my learned friend that up to this time, though there was an ecclesiastical Rector, the Vicar had the small tithes. But now we come to a document out of the same custody and in the same Bishop's Registry, and open to all parties who chose to enquire. It is of the date 1296. Now this document is one of extreme importance, and fortunately it is as intelligible as it is important. It states, that there was then a Vicarage, that the monks, *i.e.* the Monastery of Bardney, had the advowson, and that the Abbot was the patron; the Vicarage is stated to be vacant; and it is stated that after calm and long deliberation with respect to it, it was ordered that from thenceforth the Vicarage that was then vacant, should be consolidated with the Rectory, in 1296; therefore it would be consolidated with the Rectory, in other words, included with it; "and that the church "of Hale (it says) shall be governed by its Rector without a Vicar instituted there, on condition that there be for the future two chaplains

"appointed," and so on. Now, then, I venture to propound this as law that cannot be controverted;—that at that time of day it was competent to those parties, the Vicarage being vacant, and there being a Rectory,—that they would have authority—to consolidate the Rectory and Vicarage if necessary.

CHIEF JUSTICE ERLE: That is so; is it not so, Mr. Bovill?

MR. BOVILL: They might do it in a certain state of things, and separate it again.

MR. MANISTY: I will shew what was done afterwards; but there is an end of the Vicarage! I have taken their foundation stone away! If that is removed, so all that is built upon it is gone likewise!

Now, gentlemen, I will shew you the creation of the new Vicarage and its endowment. There is the creation of a new Vicarage, but there is an end to my learned friend's Vicarage of 1280. But presently we come to a document that proves it to demonstration; and I am surprised the case of my learned friend should have been closed without it, as it was. From 1296, for fifty years, we find Rectors are instituted, and Rectors only. And, I will shew you again, in 1346, how that a new Vicarage was carved out of the Rectory, and then that there were Vicars only and no Rectors. Unfortunately these documents were not known at the time of the former suits. I will shew that the former Vicar must have known of them; but, before we proceed to that, I must observe that the document of 1280 was the foundation for all the late Vicar's proceedings. Vicar Bingham *must* have known of the other documents, and I will shew that he must have known of them. But, to proceed—

In 1304, a *Rector* was instituted to the Rectory, which contained the Rectory and Vicarage, united and consolidated. The Institution says that "Robert de Askeby, Priest, was presented, by our Lord the King (by reason of the temporalities of the Abbey of Bardney being at the time of this presentation in his hands), to the Church of Great Hale, vacant by the death of William de Riby, last Rector thereof; Inquisition being first made by the official of the Archdeacon of Lincoln." That was in 1304.

We find another Rector instituted in 1331: "Mr. Ralph de Luceby, Priest, presented by brother Richard, Abbot of Bardney and the Convent, to the Church of Hale, vacant by death of Elias de Wheteley." That was in 1331. So that we have in that time Rectors. And I will shew you that from 1296 down to 1346, there is no trace of any Vicar whatever.

In 1337 we shall find that a Chantry was established. That would be to assist the Rector to perform the ecclesiastical duties of the parish. And it states that the Chaplains of the Chantry were to assist the Rector of the Church of Hale, and (mark the words) "*or the Vicar of the same, if any there shall be in future;*" knowing that at the time there

was no Vicarage, no endowment; and, therefore, they are to assist the Rector, "or the Vicar, if any there shall be in future." That was in 1337.

But now, gentlemen, we come to an extremely important piece of evidence. My Lord has had some experience in these matters, and I venture to make this observation: "That there never was a case made out, by links, so clear as this will be. Five hundred years elapsing, yet it is as clear as if it had been of the last century."—In 1344, it was thought that it would be better to appropriate the Church of Hale to the Abbot and Monastery of Bardney, and to do it in proper form by the King's License; and the Inquisition was to ascertain whether it would be to the King's damage. As a matter of history, it is marvellous how carefully they took in hand every matter of this kind, at the time. The first thing they did, was, to issue a writ, called the *Inquisitio ad quod damnum*. It is an Inquisition taken, to see whether it would be advisable to appropriate the Church of Hale to the Monastery of Bardney; and whether it was to the damage of the King if this should be done; and we have the Inquisition itself, taken in 1344, reciting the whole matter. (There appeared to be two Rectories under consideration—Hale and Heckington. They seem to have run in couples very much after this time. Hale and Heckington are the two they appropriate.) The jurors of the Inquisition go on to say, that it would not be to the damage of the King, and that they might appropriate the Churches of Hale and Heckington: and they go on to find the value of these Churches; and they say, "The Church of Hale aforesaid is worth, yearly, sixty and ten marks." There we have the seventy marks, made up of the fifty-four marks, the one mark, and the fifteen marks, which I shewed you by Pope Nicholas's Taxation, were found to be the pension of the Abbot of Bardney, the Rectory, and the Vicarage, taken separately; and I have shewn you how they were united together by the Act of Consolidation, in 1296. They find the Church is worth sixty and ten marks, making the seventy; and they find it will not be to the damage of the King (the Church being of that value) that it should be appropriated to the Rectory: accordingly, we have the King's License for the change, which I shall produce, and so I shall not have to ask you to infer anything; and, after that, we have the Appropriation itself, in 1345. I will not weary you by dwelling on it, for it simply carries out what was proposed. The appropriation is done *upon conditions*, which, to my mind—and I venture to think satisfactorily to yours—put an end to all doubt that at that time the Vicarage was united to and consolidated with the Rectory. If there could have been any doubt upon your minds that at this time the Vicarage was united to the Rectory—as by the Act of 1296—I think this document will put an end to it altogether. This document (the appropriation) is of some length, but I will only call your attention to two or three parts of it. It recites that Pope Clement the 5th had presented, in former times, to the Monastery of Bardney, the Churches of Hale and Heckington; and that they thought it better to apply to the King to have the appropria-

tion confirmed, the former letters having been lost; and they (the Monks) submitted themselves accordingly; accepting the appropriation on the conditions that are stated—viz., “nevertheless we do reserve”—(now, gentlemen, this is the important part)—“nevertheless we do reserve “from the profits of the said Churches of Hale and Heckington, for the “perpetual Vicars to be canonically instituted to the same, by authority “of us and our successors, or their successors, who ought to perform “the Cure for the parishioners of the same Church, fit portions”—(that is to say—you shall have the Church, but we reserve to ourselves the right to carve out a Vicarage, and to give to the Vicar what we think proper to allow),—“from which the said Vicars may be able fitly to “support themselves, and pay the Episcopal rights, and sustain any “other charges incumbent upon them. Also, we do specially reserve, “to us and our successors, in what the portions to the Vicars of the “Churches aforesaid assigned or ordained, ought to consist.” And then we have in the following year, 1346, the instrument, the Endowment itself, of this Vicarage, which they have not ventured to put before you.

MR. BOVILL: You have got it; we did not find it.

MR. MANISTY: I will shew you they are indexed together.

CHIEF JUSTICE ERLE: What do you care about the *ad hominem*? Produce your title, and, if it is a title, judgment for you.

MR. MANISTY: It is said we are to submit to certain proceedings taken by Vicar Bingham, founded on the old endowment. We had not got this document then; it was never discovered at that time. We took his word for it, there was the one instrument and no other. The land-owners believed him. They were rather too credulous; and it was not until the parties stirred themselves—for they had depended upon what had been told them,—aye, I believe so! it was not until, as I told you, in consequence of the conviction on their minds, that the documents they discovered shewed that there must have been a new endowment; and, as I will prove, acting under advice, that they should go and see with their own eyes, and not take for granted what had been told to them by their opponent, though convinced, from the other documents which I am going to put before you, that there must have been a new endowment—it was not until they went and searched for themselves, that they discovered it; and then they found the two endowments in the same calendar together, and then they found the whole matter explained!

Gentlemen, I shall not have the least difficulty on this matter. I shall not ask you to *infer* there was a new endowment, as often has to be done, because we have got the document itself here; we have the Bishop's registry here. Now, this document is in 1346. It purports to be the “Ordination or Endowment of the Vicarage of Hale.” (Mr. Manisty then read the Endowment as set forth page 19, commenting on the important passages—viz., the lands in each of the four fields of

Hale; the three acres in the Rector's Park; the specification of the particular Tithes, which the Vicar was to have, and the reservation of those Tithes (lamb and wool) which the Vicar was not to have.)

Now, here we have the endowment. The first Vicarage was consolidated in 1296, with the Rectory; but in 1346 we have a fresh creation—a new Vicarage created. My learned friend takes a leap from 1280 down to the time of Henry the 8th. Now, I will put in documents to fill up the whole of that space. Instead of coming at once down to the time of Henry the 8th, I will fill up the interval. Now, gentlemen, I will come to the *Ministers' Accounts*. They are the accounts of the Ministers of the Crown, taken of the profits received for the Crown, after the dissolution of the Monasteries, in the reign of Henry the 8th. They were taken with great care, giving the different accounts under their proper heads and columns. 1538 is the year of the first Ministers' Account that I shall put in. The Ministers of the King make a return of the profits of the Church in question. It makes no mistake about it. I will give you the particular document. They find amongst other things, "for the Farm of the Rectory of "Hale £15; and all Tithes of grain and hay, *wool* and *lambs* to the same "appertaining:" They answer—"For the Farm of the Rectory of "Hale, with all houses within the said Rectory; and also the demesne lands and meadow appertaining, the advowson of the Vicarage only excepted."

CHIEF JUSTICE ERLE: He accounts for the profits of the Rectory so much, and did not account for the advowson. I quite understand it.

MR. MANISTY: And then he goes on, and says, "And for £11 13s. 4d. "for the Farm of the Rectory of Heckyngton; and all Tithes of grain, "and hay, and wool,"—those are the words: it is of "wool," and not lambs. It shews how exact the Minister was. This, then, is the Minister's Account, stating of what the Rectory of Hale consists; and, in his account of the Rectory, he includes wool and lamb.

CHIEF JUSTICE ERLE: He does not account for the advowson of the Vicarage. There is nothing to account for in an advowson till there is a vacancy. He does account for all the Rectory, but not for the advowson of the Vicarage.

MR. MANISTY: There is another account, in the 33rd Henry the 8th, which I will also put in. I think I have read that already, instead of the 30th Henry the 8th, one overlay the other,—but I have got enough; and it is enough for me to say, that after the dissolution of the Monasteries, there were these accounts; and lamb and wool is in that of 33rd Henry the 8th. Also, it states—"the Minister answers for the "lands in possession, and for £15 for the Farm of the Rectory of Hale, "with all houses, &c.:" and then it sets out—"and also all that the "Rectory consisting of the Tithe of lamb and wool."

Gentlemen, there is also a document which is often produced in cases of this sort, and which, although I think nothing can be stronger

than what I have stated, yet I ought to put in. It is the *Valor Ecclesiasticus*. It is a valuation made in the 26th Henry 8th, 1535. It was a valuation made in order to ascertain the value of the different livings, &c., which would come to the Crown, if the Monasteries were dissolved. You will find in one part there is this: "Hale Vicarage. The Rectory "there is appropriated to the Monastery of Bardney. George Pyndar, "Vicar, hath, to wit, for a Manse, with lands appertaining, 10s.; "for Oblations at the time of Easter, £4; for Oblations on holidays, "with minor Oblations, £2 13s. 4d.; for Hens, 2s.; for Hemp and Flax, "13s.; and for Pigs and geese, 10s.; in all, by the book, £8 8s. 8d." Not a word about lambs and wool, which would have been the principal Tithes if they had been appropriated to the Vicarage. There is the Rectory appropriated to the Monastery—this is the Vicarage; so that we have, as it seems to me, about as conclusive evidence of this Vicarage and Rectory, up to this time, as any one could reasonably desire. What question there is—if these documents are genuine (and there cannot be a doubt about it)—I do not know. But then it is stated by my learned friend there is a document, which we rely upon, in the time of James the 1st, the Grant which my learned friend has put in—of course he did; it might be, he ought not to put it in, as we rely upon it; but, if that were put in, why—let me ask—were the other documents not put in? But, gentlemen, I will not go back to that; but it does seem to me, taken with my documents, that this Grant is extremely valuable. It is a Grant from the Crown at the time of James the 1st;—it would be in the year 1607, about the 4th of James the 1st. The Crown granted, among others, the Rectory of Hale. It is quite true he granted other rectories, and the words "wool and lambs" might or might not, among many other grants, apply to this particular Rectory; and if it stood alone it might be of no value at all; as it is, it is only of this value:—it shews that the King then parted with the Rectory of Hale; and it is necessary, in cases of this sort, in order to induce a jury to say the Crown had parted with it, to put in a grant that will account for the Rectorial Tithes—lambs and wool—having become the property of the *landowners*. In truth, *they* are the Improprate Rectors; they are not only the landowners, but they are the parties entitled to all the tithes—excepting only such as belong to the Vicarage; and, therefore, representing as I do, the landowners here, putting my learned friend to try the title of the Vicar, it is enough for me to shew that the Vicar is not entitled to the tithe of lambs and wool; and it would be wasting your time were I to go on to deduce the title of the different landowners from the Crown; for the question here is, whether the Vicar has shewn, to your satisfaction, that the Vicarage is endowed with the tithes of lambs and wool. Now, I, on the part of the landowners, take my stand upon this. I have put in documents shewing he did not possess them. It is true that my learned friend has produced against me proceedings in Chancery, in 1813, which resulted in a decree in his favour, but entirely, as I submit to you, owing to the fact that the landowners were not well advised, and that they set up every defence but the right one. Their defence was a great error, no doubt; but it was a common error,

and concurred in for many years, until the House of Lords decided, ultimately, that such an arrangement between the Vicar and the land-owners (*referring to the Inclosure*), though confirmed by the court of Chancery, would only bind the then Incumbent, and that any succeeding Vicar might upset it. This state of things had gone on from 1699, until the Vicar filed his bill in 1813. But it is enough for me, if I have proved to your satisfaction, as I hope I have, by the documents produced, of what the Vicarage consisted. Now, I propose to shew, in more modern times, how these matters were dealt with. My learned friend has put in a terrier of the year 1690, signed by the Curate, who, I believe, afterwards became Vicar, and two Churchwardens. It is a terrier of 1690, in which it is stated the Vicar is entitled to all "small tithes." Now, there were no doubt tithes, certain tithes, to be paid to the Vicar, and probably the Churchwardens did not know the difference between great and small tithes. I put it to you whether or not it is not a common occurrence—the parties knowing the large tithes were the Rector's—whether it might not be a common thing, in speaking of the Vicar's tithes, to say, when questioned upon it, "Oh yes, he has all the *small* tithes." If the Vicar had said, "Are you aware that lamb and wool are small tithes?" the answer might have been, "Why, lamb and wool are the great tithes of the parish;" and, therefore, well might the Curate get the two Churchwardens to say the Vicar had all the *small* tithes. But, gentlemen, you will find there are terriers here far more specific. Now, here is a terrier—and I put these terriers in to shew that you cannot quite rely on any terriers, as none of them quite agree with each other; they none of them agree with the original document itself, in the *Ministers' Accounts*; but this terrier which I am now going to call attention to—it is of 1612—is a very different terrier from that which was signed by the Curate and the two Churchwardens. Now, this terrier of 1612 is of greater importance than that of 1690. It is signed, not only by the Vicar, but by several others, who, you may fairly suppose, were the farmers of the parish. It purports to be, "a survey or terrier of all the possessions, glebes, and tithes, belonging "to the Vicarage of Hale aforesaid, taken by Samuel Sanders, Vicar, "the Churchwardens, Sidesmen, and other inhabitants, whose names "are subscribed," &c. "Imprimis the home-stall south of the Vicar- "age," &c. (Reads the description of the glebe lands, down to "Item "three acres more of meadow, lying in a place called the 'Parsonage "Park.'" See page 26.)

Now in the endowment of 1346, you find the Vicar is to have "3 acres in the meadows of Hale without the place which is called the Rector's Park:"—here it is called the "Parsonage Park;" and here you have at once a direct reference to the endowment of 1346, the ordination of the Church of Hale, and which we produce in order that there may be no doubt about it: "As appeareth (the terrier proceeds to say) by the *ordination* of the said vicarage, but now in the tenure of one John Cawdron, gentleman, and by him detained from the said Vicarage." It is important here, that the first endowment of 1280, and it is a curious

fact, *excepted*, and did not give to the Vicar, the lands in the Park—it excepts all the lands in the Park—we have that early set up as the governing word—excepting. Then we have, in this terrier of 1612, the lands in the four fields of Hale, as given by the endowment of 1346: and then the terrier proceeds, “Item, there belongeth to the said Vicarage the tithe of all ancient enclosures within the said parish:” Now that is important, it is an important fact, those words, “the tithes of the *ancient* enclosures.” The parish contains about 6000 acres, but there are not above 300 acres of old enclosure, and the claim, in this action, is for the lambs and wool issuing out of *new* enclosure, a part of what had been the open lands of the parish: there were only 300 acres of ancient enclosure, and now they claim to distrain for this tithe rent charge for lambs and wool issuing out of the *new* enclosure. It is not the 300 acres, but the 5000 and odd acres they are now claiming for. What says this terrier? It says nothing about new enclosures. I grant my friend thanks for this terrier, for it is destructive of his claim. This parish was a great open large parish, and the terrier says, “Item, there belongeth to the said Vicarage the tithe of all ancient enclosures within the said parish, and all manner of tithes whatsoever *except* corn, hay, wool, and lambs, not issuing within the ancient closes:” it reserves that, and expressly admits that the Vicar is not entitled to the tithes of wool and lambs in the open and unenclosed land. That is the terrier taken in 1612, signed by the Vicar, churchwardens, and certain inhabitants. This is a distinct history, under the Vicar’s own hand, of his rights, in the year 1612. Well now, it is a curious thing, but there appear to have been two or three other terriers between 1612 and 1690, but the Vicar never appears to have stated in writing any terrier of his tithes; he contented himself with taking a terrier of his glebe lands; but in 1690 you get a terrier signed by the Curate of Hale, and the two churchwardens. I am told there are four churchwardens, and that the Vicar appointed two, and here he gets his own two churchwardens to say “all small tithes” are his; and it is upon that *rag of a case*, the only thing in my way, and all drawn up by himself, the Vicar getting his own two churchwardens to sign it, that I am to be told all the other documents are wrong! The old endowment of 1280 was in existence, all the other documents, everything, was in its order, as neat a case as was ever put to a jury: there was the dissolution of the Monastery, matters go down to 1690 when there was this terrier, and without shewing lambs and wool were taken in kind, when Vicar Bingham got the Vicarage, he coupled them all together, and so *gulled* the parishioners! for they never appeared to know anything about it, and they were possessed with a notion they could not hold out against him, though the terrier I am calling your attention to was a perfect bar to his claim! It was no bar, however, to his recovering in 1817. The documents we have now before us were not then found, and the litigation Vicar Bingham set up, ended in his getting some thousands of pounds, but that would not take away the right of the landowners; for the learned Judge, who afterwards decided the appeal, said, “If you had got your documents there would have been a defence.” But what-

ever then occurred could not take away the right of the landowners, because though there was a notion that what occurred in 1699 was binding, it was decided the other way, and here we are in 1860 trying the case for the first time. The landowners certainly took steps to resist, and did resist Vicar Bingham; for though he got a decree, and got his arrears, he never got, but for a short time after the decree, the tithes of wool and lambs. I will give him till 1828, up to which time some small sums may have been paid, but he never tried his right again, and so far from the landowners having gone on paying this tithe, matters remained as they were before, and he never got what he did, the large amount of arrears, *but by a grave error and mistake!*

Now then, gentlemen, you have had this document of 1612. I am very sorry all these things have to be laid before you: there is the litigation you have heard of in 1813, and going on to 20 and 21, but let us hope, now, that the question will be settled for ever and ever. In 1699 the parish of Hale, with the exception of about 300 acres, was all open unenclosed land: it was all unenclosed, and it was arranged that an enclosure should take place, and allotments should be made to the owners of the great tithes, and also allotments to the Vicar for all his tithes, both in Great Hale and in Little Hale—for the parish consists of two townships, called G^t Hale and Little Hale,—and a bargain was come to, the benefit of which my learned friend's client has to this day, for he holds his allotments, taken in virtue of that bargain, down to the present time. Well, a bargain was come to that allotments should be made to the Vicar in full discharge, and so the owners of all lands, in 1699, got their lands discharged as they thought. The Vicar of the parish had allotments made him according to his claims, the parish was divided and enclosed, the award is here, and the whole matter is open to your inspection, but the material part of the award, as respects this case, may be stated in a very very few words. It was a matter, no doubt, of annoyance to the landowners that the Vicar should have got his allotments, and yet that they should be called upon to pay tithes: we cannot help it, they say, as to the allotments, but we can resist it as to the tithe. Now here is this Inclosure in 1699, and it is a curious fact, that when my friend opened this, and adverted to it, I asked why he did not put it in, and he said "you may put it in, if you like!" It was opened by my friend, and not put in. I shall put it in, because it so happens that the same party who was Curate, and made that terrier, in 1690, was the Vicar in 1699. Now how does he put forward his claim when he is before the Inclosure Commissioners? Does he come there, and say, that he is entitled to "all the small tithes?" Certainly not, he says—this Benjamin Deakon, as Vicar of Great Hale, when before the Commissioners, says—he is "entitled to *some* small tithes"—"*some*" small tithes, "arising out of the lands to be enclosed." (We are now dealing with the Inclosure of Great Hale; we shall have Little Hale presently.) Vicar Deakon says, "I am entitled to "*some*" tithes, and I claim to have an allotment made to me in Great Hale for all my tithes there: and I also claim to have an allotment for some rights of common."

Accordingly we find in the decree an allotment of 23 acres and 23 perches to Vicar Deakon:—it says, “unto complainant Benjamin Deakon, Vicar of Great Hale, one plot or parcel of ground, called Preacher’s plot, containing 23 acres and 23 perches, in Great Hale. The same plot to be to the said Benjamin Deakon, and his successors, Vicars of Great Hale aforesaid, and in lieu and full satisfaction of all tithes due or payable from, or out of, or growing, arising, or renewing, within the said fields, meadows, fens, commons, and wastes, (in Great Hale) so agreed to be enclosed; and in lieu of the said Vicar’s right of common.”

So he got 23 acres and 23 perches in satisfaction of all his tithes, that is, in satisfaction of all he had in Great Hale; and in lieu of his right of common. It also states that certain allotments were made to Ebenezer Cawdron, the Lay Impropiator, (388 acres,) so that he received compensation also, for the Rectorial tithes. Then it goes on and recites, “It was agreed and consented to by all the said persons, that they, their heirs and assigns, should respectively for ever hold the same grounds and plots in severalty, freed and discharged of all commons, tithes, and other duties, to be had and claimed by the said complainant Ebenezer Cawdron, impropiator of said Parsonage of Great Hale aforesaid, his heirs and assigns, or by the said complainant Benjamin Deakon, and his successors:” and I must confess, if the Vicar’s successor had been made aware of the facts, and how he got these allotments, I think he would have paused before he brought this case into Court, without giving back to the landowners the land they had allotted to him in 1699! A curious thing arose during the proceedings of Vicar Bingham: when Vicar Bingham was asserting his right, he was asked to give up the tithe allotments; his reply was, “I cannot say what they gave me for my common, or what for my tithe:” (the allotment including both); but he never told them what he had got for his *tithe only*, in the other Lordship:—For tithes only he had got 23 acres and 3 roods: The first 23 acres and 23 perches in Great Hale, was for *tithe and common*, but the other 23 acres and 3 roods was for *tithe only*.

Now, then, we come to the Little Hale Inclosure. It was very nearly one half of the parish. There are three thousand and odd acres in Great Hale, and very nearly that in Little Hale. Now, when we come to Little Hale, the other Township, what do we find there? We find this other allotment to the Vicar, of twenty-three acres and three roods. In Great Hale, it was twenty-three acres and twenty-three perches; here it was—“twenty-three acres and three roods, set out to Benjamin Deakon and his successors, Vicars of Great Hale, to hold to him and his successors, in full lieu of, and satisfaction for, all tithes belonging to, and to grow due, and payable to the Vicar of Great Hale aforesaid.” And here again it is stated, that the Vicar is only entitled to *some* small tithes; here again, it sets forth, “that John Harvey, Esq., of Ickworth, was owner of the Manor,” and so on; and, “that Benjamin Deakon, as Vicar of Great Hale, was entitled to *some* small tithes arising out of the lands in Little Hale aforesaid:”—“*some*,”—the same

as before; and he gets this allotment of twenty-three acres and three roods in lieu and full satisfaction of all his tithes in Little Hale. Vicar Bingham never told them of this allotment which he had got for tithes pure. He gets one allotment for tithe and common, and then says, "How can I give up that which is for tithe *and common*? Shew me "how much there was for my common!" (knowing perfectly well that it would be impossible to make the distinction.) "Are we, then," said the landowners, "to give up our lands and our tithes too!"

And now, gentlemen, these Inclosures of Hale, in 1699, took place under a decree. There was a decree in Chancery to confirm them; and when Vicar Bingham commenced his suit, in 1813, the landowners of that time of day, put up this decree as a defence:—"What right "have you," they said, "to ask us for tithes of lambs and wool, when "you know there was an inclosure, and you got an allotment of twenty-three acres and twenty-three perches for tithes and common, in Great "Hale, and twenty-three acres and three roods, for tithes, in Little "Hale?" It was said by the then Lord Chief Baron Abinger of the Exchequer, that compositions by one Vicar were not binding on his successor; that every succeeding incumbent would have a right, on succession, to repudiate the act of his predecessor: and so the decree and the defence availed them nothing, and Vicar Bingham contrived to hold the allotments by *that quibble* which I mentioned. It is not right to speak ill of the dead; but it is necessary, for the sake of truth and justice, to say, he got rid of the appeal to him by a *quibble*; for he said, "I cannot tell how much was for common, and how much for "tithes," and so he kept the whole!

Gentlemen, the old inclosure of this parish was only 270 odd acres. In the present action we are dealing not with the old, but with the new, inclosure; for the distress is admitted to have been taken on new inclosure. And now what says the Vicar's own terrier of 1612? Why it *admits* that he was *not* entitled to the tithes of lamb and wool on new inclosure. It is conclusive on that head!

Gentlemen, I feel it really is a waste of time to address you at much greater length. If the case of my friend were standing by itself, it would be overwhelming, and my Lord might well say so.

CHIEF JUSTICE ERLE: I constantly say I understand a case perfectly unanswerable till I hear the other side.

MR. MANISTY: But I am happy to say, my Lord, you do hear *this time the other side*; and that I have been able to lay before you an unanswerable case on the evidence, and it is upon written documents which cannot be gainsayed, and which must have defeated Vicar Bingham, if the advice given in 1858 had been the advice given to the landowners in 1813—namely, "*to go and look for themselves*;" and, if they had gone, and examined with their own eyes, the documents which existed in the registry and elsewhere, the case would have been clear enough. They would have discovered there had been an union—a

consolidation—of the early Vicarage and Rectory, and Vicar Bingham would have been turned round and defeated. But he gets all he can from the poor farmers; he gets hundreds—nay, *thousands* of pounds that he was never entitled to in any way whatever; and when, after some short time, he is refused the tithe he claims, no legal proceedings are taken to enforce his pretended rights.

Gentlemen, I do not think my learned friend has a right to pray the poverty of Vicar Bingham in aid, or to say he wished to get rid of legal proceedings. He began them in 1813, and an answer was put in: but it shews by what took place, that the landowners mistook their case altogether; and, in that state of things, Vicar Bingham was entitled to succeed. No doubt, after that decree of 1817, the farmers went on and paid for a time; but, when they had got their senses again, they came and sued, in the name of Farrant, putting him forward as lay impropiator; and, hoping by that means, to shew the Vicar was not entitled. That was another grand mistake to make:—it was a mistaken course, for, by their case, the landowners shewed that the impropiator had got allotments for all *his* tithes; and if this lamb and wool belonged to the Rectory and not the Vicarage, he (the lay impropiator) was bound by the inclosure, though the Church was not. *He* was bound, for he had taken his *quid pro quo*, and had become the lay Rector; and the point whether Rectory or Vicarage was entitled to the lamb and wool never was debated. Farrant's suit, therefore, was another grave mistake. It did not establish the right of the Vicar; it simply established this—viz., that Spiritual persons have a right, at times, to upset all these compositions and arrangements, though laymen have not the right. But then, says my friend, there was a third case, in which the Vicar's right was established—on a Petition. The Vicar's right established! and on a Petition!—for what? Why, a *Petition of re-hearing*—to have a review of the old suit of 1817. Why, gentlemen, I should have put that Petition in evidence before you myself, if my friend had not; for I want to know how that decree of 1817 was “followed by payment of tithe,” as they alledge. The tithe, gentlemen, was paid but for a very short time, and under the coercion of this decree, and, ultimately, we were driven to say, “you shall not take our wool or lambs—you shall never have it, unless you go into a suit, and evidence, and try the matter fairly.” And, for upwards of thirty years, did Vicar Bingham go on, year after year, and get no lamb or wool tithe; and that is what my learned friend calls payment and receipt of tithe down to the present time! And why did the Petition fail? We have the Lord Chancellor's judgment. What said my Lord Eldon? “You must pay the penalty for your sleeping. You had access to these documents, or you might have had. You have put in an insufficient answer, and you must pay the penalty for your sleepiness and sloth. I dismiss the Petition.” (And why?) “If circumstances of this kind are to form grounds of bills of review, these applications will be constant and eternal. I say nothing as to whether these matters could be evidence or not” (alluding to the then newly-

discovered evidence—not the documents since discovered—and which will be now laid before you : but they had then, at that time, found the *Ministers' Accounts*, &c., which plainly shewed, and upon which we must have asked you to have inferred (for there was quite enough to satisfy a jury) that in times long-long after 1280, there must have been some reconstruction of the Vicarage ; but the newly-discovered documents, which explain the whole matter, they had not then got ; and it was not until the landowners acted, and placed themselves for advice, under the gentleman who now sits before me, that they were fully persuaded of their real rights. Acting on the suggestions of one who stands not a hundred yards from this spot, this gentleman advised the landowners to use their own eyes, to go and search for themselves, and to trust no longer to the information of others : They did search ; the documents were all discovered, so that we shall have to leave nothing for inference.) But (returning to Lord Eldon's judgment) the Lord Chancellor went on to say, "It is now stated there was an agreement to pay a composition in lieu of rectorial tithes ; and that it appears, from documents at the Augmentation Office"—(viz., the *Ministers' Accounts*),—"that the tithes in question are included in the rectorial tithes : but is there any case of a Vicar's bill, where the first step taken was not to search in these offices ?"

CHIEF JUSTICE ERLE : Going on your negligence.

MR. MANISTY : Yes. Then the Lord Chancellor says, "If that had been done, there would have been a proper defence." He says, "If it is to be laid down that they may go on to have a decree, without looking for a defence, and then make applications of this kind, there will never be an end to them. It is not a case of a search made, and miscarriage in that search ; but it does not appear that there was any search made at all." That was to say, "You have been so negligent—you have set up a defence, never taking the trouble at all to see whether it was a defence or not ; you have set up a defence which you do not prove, and you have made a great mistake ; for," says his Lordship, "if the proper search had been made, there would have been a perfect defence ;" and that is what my friend calls, "a decree for the third time establishing the Vicar's right to these tithes !" I say, gentlemen, it is just the reverse. What the Lord Chancellor says, is, "you must pay the penalty of your negligence, in the costs you have put the parties to." It never entered into his head that we were to be bound for all time ; and, in fact, we resist paying the tithe for thirty years. The Vicar dies in 1858. Mr. Sugden is instituted in 1858.

CHIEF JUSTICE ERLE : What I meant to say, was, "we have listened to every word you have said, and appreciate it ; but what I think is, you have run your course."

MR. MANISTY : I have said, I believe, all I had intended. If there be anything, on consideration, that I have omitted, I may supply it.

CHIEF JUSTICE ERLE : You have parol evidence.

MR. MANISTY : There will be very little beyond the documents.

CHIEF JUSTICE ERLE: I take it, from the time of the decree, down to the year 1824 or 1825, to that time, the decree was in force; and from that time there was, in the parish, a spirit of refusal, which grew more and more.

MR. BOVILL: More or less.

CHIEF JUSTICE ERLE: A disputed claim.

MR. MANISTY: I shall have to prove one fact,—that, from the consolidation, in 1296, there are no Vicars instituted for a period of fifty years,—*i.e.* prior to the time of the new Vicarage—and no Rectors during the after time, when there were Vicars.

CHIEF JUSTICE ERLE: That is, until the benefice was appropriated to the Abbey, there were —.

MR. MANISTY: No; simply that down to 1296, we find Vicars, and from 1296 to 1346, Rectors and no Vicars, and from 1346, Vicars and no Rectors.

CHIEF JUSTICE ERLE: Mr. Bovill, it is the legal effect of documents, as far as I see. When I take the liberty of telling Mr. Manisty he has got a title, of course it is on legal documents, it is a question of law whether he has got a title.

MR. BOVILL: There is something more, my Lord. Some of these documents I have not seen before; at the same time, I have certain answers to give upon the documents themselves, which have been referred to, and which, when we come to contrast the one with the other, will, I think, defeat the case which my learned friend has set up.

CHIEF JUSTICE ERLE: You see there was power reserved for endowing a new Vicarage—(under the appropriation).

MR. BOVILL: It seems the new endowment was in 1346. I believe I shall be able to satisfy the jury upon that document.

CHIEF JUSTICE ERLE: Then there are the Ministers' Accounts, in the time of Henry the 8th, &c., &c.

MR. BOVILL: Yes, I am quite aware there are certain documents he has put in, upon which he has made observations and comments.

MR. MANISTY: I have not said one word about the terrier of 1707, put in by my friend, but I would rely much upon that. The document of 1707 was put in by my friend. Now, I have before me the endowment of 1346, and the terrier of 1707, and in the terrier of 1707 there is no mention of tithes of lambs and wool. The endowment and the terrier agree, almost word for word.

CHIEF JUSTICE ERLE: It is plain it must turn upon the effect of these documents.

MR. MANISTY: Lord Kenyon says, "we presume an Act of Parliament, if —."

MR. BOVILL: Never mind that; but if you look to this endowment of 1280 —.

CHIEF JUSTICE ERLE: All I want to know is, whether it is a question on the effect of documents.

MR. BOVILL: Perhaps there would be time now to take the evidence.

CHIEF JUSTICE ERLE: A very promising speech may be left; must it be followed by evidence? Surely, if the documents are genuine, it is a question for the Judge. I thought there was hardly any fact of contestation at this time. It comes to a question of documents. I have my impression. I do not think it is a thing of contestation by speech, still I do not interfere with the right.

MR. BOVILL: We must take the evidence under any circumstances; and then, when that is closed, I will see.

CHIEF JUSTICE ERLE: We will take Pope Nicholas' taxation.

MR. MANISTY: Pope Nicholas' taxation is the first. Does your Lordship wish to have any reference to that?

CHIEF JUSTICE ERLE: I have taken a note of your opening. "Fifty four marks"—(that will be the Rectory); Pension, one mark; Vicarage, fifteen marks. As this case runs so much on documents, having taken a note of Mr. Manisty's opening, I propose to put in the margin of those proved, "proved accordingly."

MR. BOVILL: Yes, just as well. I might mention this, my learned friend said ten marks; now, it is fifteen instead of ten.

CHIEF JUSTICE ERLE: No, it is fifty-four, fifteen, and one,—that makes seventy. Sixty plus ten, is seventy!

MR. BADELEY: The next is the document 1296, the Consolidation of the Rectory and Vicarage.

MR. SWAN, Sworn.

Examined by Mr. Badeley.

Q. Do you produce, from the registry of the Bishop of Lincoln, the Consolidation of the Rectory and Vicarage, 1296?

A. Yes. (Produces an antient folio; records of Bishop Oliver Sutton.)

Q. That you produce from the Registry?

A. Yes.

MR. BOVILL (examining the book with Mr. Hewlett, &c.): Yes, that seems to be so, my Lord. (A copy was handed to his Lordship.) Your Lordship will take a note; it is an entry contained in a "book of Institutions, in the time of Oliver Bishop of Lincoln."*

MR. MANISTY: And yours came from a book of Institutions?

* A title given by the bookbinder.

MR. BOVILL: It is a solemn deed, and it does not properly come from "a book of Institutions." Your Lordship will take a note of that; for, if it had been in a proper place for Institutions, Mr. Hewlett could not have missed it.*

MR. MANISTY: That is the registry of all the Episcopal proceedings, from time to time, in consecutive order. Each bishop, in turn, has his registry; and it goes on, in continuation, from time to time.

CHIEF JUSTICE ERLE: If anything turns on this, the register should be produced; if anything turns on the nature of it. At present it appears very much as if it was each bishop's record.

MR. BOVILL: It is not one book, but a number of books, bound up together.

MR. BADELEY: They have been bound up together; they are whole registers.

MR. BOVILL: I am not saying they are not genuine books.

MR. MANISTY: If you look at your book, it is just the same.

MR. BOVILL: You never let me finish a sentence.

CHIEF JUSTICE ERLE: What is the first beginning of it?

MR. BOVILL: It is a collection of books all bound together; and it is called "Institutions of Bishop Sutton."

CHIEF JUSTICE ERLE: Has any body looked to see?

MR. BADELEY: Mr. James Dimock has.

The Rev. JAMES DIMOCK, Sworn.

Examined by Mr. Badeley.

Q. I believe you are a Clergyman, and a Canon of the Church of Southwell?

A. Yes, minor Canon.

Q. And have you bestowed great attention on the ancient documents connected with the Diocese of Lincoln?

A. I have.

Q. And amongst them the documents of the Bishop's Registry?

A. Yes.

Q. You know the book that has been produced here I suppose?

A. I know it well.

Q. You have examined the book?

A. Many times.

Q. Does it consist of the various registers and institutions of the different Bishops of Lincoln?

A. Of Bishop Sutton only.

* See note, page 14.

Q. From what date to what date?

A. From 1290 to 1300. (I think I am right.)

CHIEF JUSTICE ERLE: Only ten years?

THE WITNESS: Ten years.

Q. (BY MR. BADELEY): Is the document that has now been referred to, of the date 1296?

A. Yes.

Q. You have examined that?

A. Yes.

Q. Does it appear, from your knowledge of ancient documents, to be an ancient document?

MR. BOVILL: I shall not dispute that.

THE WITNESS: The whole volume. It is the register, taken at the time, of all the Episcopal acts, in fact.

Q. (BY MR. BADELEY): Would the Consolidation of the Rectory and the Vicarage be likely to be there?

A. I should say, in a general way, the records are divided into two sets. There are what are called the "Memorandums," and the "Institutions." They are in two distinct books, that is, two bound in one. One is "Memorandums" and the other "Institutions," each beginning with a fresh page, a fresh volume in fact.

Q. That appears to be the original document of 1296?

A. Undoubtedly.

Cross-examined by Mr. Bovill.

Q. This document occurs amongst the book of institutions?

A. It is the original document,—the book is called "Institutions."

MR. JOHN SWAN.—recalled.

Examined by Mr. Badeley.

Q. Do you produce from the registry of Lincoln, of the date 1304, the institution of a Rector to the Rectory of Great Hale?

A. Yes.

MR. BADELEY: This is a copy of it (handing a copy to the Judge).

CHIEF JUSTICE ERLE: Did you hand me up a copy of the deed of 1296.

MR. BADELEY: There it is (handing one up). Now the institution of a Rector in 1331; we have had one of 1304, now we produce one of 1331.

CHIEF JUSTICE ERLE: Rector again?

MR. BADELEY: Yes.

The Rev. MR. DIMOCK.—recalled.

Q. (By MR. BADELEY): Have you examined the registry to see whether, after the period of 1296 and down to 1346, there were any institutions of Vicars of Great Hale?

A. During that period you find institutions of Rectors only.

(Mr. Swan here produced the foundation of the Chantry of St. Catherine, 1337.)

CHIEF JUSTICE ERLE: During the time the Vicarage and Rectory were united, Rector appears in the registry of the Bishop—Vicar nowhere appears. The Chantry is allowed to assist the Rector.

MR. BOVILL: (*Referring to the consolidation of 1296*) I do not know what course the thing may take: (I have never seen it before) when we come to read it through, "the Church of Hale shall be governed by its Rector without a Vicar instituted there, on condition that there be for the future two Chaplains continually ministering therein;" "And it was written to the Official of the Archdeacon of Lincoln, under date of the 10th of the Kaland of December, in the aforesaid year, at Bukeden, that from thence-forward he should freely permit the aforesaid Rector to receive the fruits and profits of the said Church in their integrity." There is nothing here, that I see, by which the Vicarage can be done away with. It may be that so long as he chooses to have two Chaplains, he may, but there is nothing to destroy the Vicarage.

MR. MANISTY: The subsequent documents shew it.

MR. BOVILL: It is all very easy to say so.

(The Judge here referred to the original Latin.)

MR. BADELEY: (Reads through the document from the original Latin.) *Vide page 14.*)

CHIEF JUSTICE ERLE: The whole tenor of this is, that for the time future the Vicarage shall not be, and the profits shall go to the Rector for the time being: the Rector shall reside there, and have the profits of the Vicarage; and he would then be bound to do alms, &c.

MR. BOVILL: On condition that he should keep two Chaplains.

MR. MANISTY: In the original record, it is called *Consolidacio Vicarie de Hale Rectorie ejusdem*.

MR. BADELEY: "The consolidation of the Vicarage with the Rectory."

CHIEF JUSTICE ERLE: It is so, Mr. Badeley, the union of two benefices.

MR. BADELEY: Now we produce the foundation of the Chantry of St. Catherine, in 1337.

MR. BOVILL: This foundation of the Chantry. They are to say masses, &c., (reading document) and nothing is to be done to the prejudice of the said mother Church—"not to suffer injury or loss to the same Church, in tithes greater or less, oblations, obventions, or other rights whatever, but if any of the things pertaining to the same shall have come into their hands, these, without diminution, to the Rector of

the same, or the Vicar for the time being, or their Ministers for this purpose deputed, will faithfully restore without delay, unless the Rector or Vicar in this behalf shall wish in anything to do them special favour."

MR. MANISTY: You must take these words in conjunction with "also I will and ordain that the same Chaplains, on double feasts, and Lord's days, assist the Rector of the Church of Hale, *or the Vicar of the same, if any there shall be in future.*"

MR. BOVILL: "Or in future."

MR. MANISTY: No, "if any there shall be in future."

MR. BOVILL: That shews it was not intended to be a permanent dissolution.

CHIEF JUSTICE ERLE: But this is a grant.

MR. MANISTY: It is an ordination.

CHIEF JUSTICE ERLE: Is it not a grant by Hugh de Wheteleye—a grant, or warrant, to provide for the souls of himself, of his father and mother, his brother, and several other people. It is a gift of alms, which at that time was a constant course of business with persons who wished to do that which was kind; and he names a great many of his relations—he says, for the health of the soul of Elyas de Wheteleye, his brother, and of his own soul, and the souls of his father and mother, and of all the faithful departed, and in future departing, and for the increase of the divine worship," and so on (reading) "and for the aid of the Rector of Hale, or the Vicar, *if any future Vicar there shall be.*" That is quite enough.

MR. BADELEY: And these words occur three or four times in the document.

MR. MANISTY: Your Lordship has taken a note of the Ordination of the Chantry?

CHIEF JUSTICE ERLE: Yes, I have.

MR. BADELEY: Now the Inquisition *ad quod damnum*. (It is produced by *Charles Devon, Esq.*, searcher of antient records—*sworn.*)

CHIEF JUSTICE ERLE: What is the date of the Inquisition?

MR. BADELEY: 1344.

CHIEF JUSTICE ERLE: What was the thing proposed to be done?

MR. BADELEY: It was an inquisition to ascertain whether the Crown would be damaged by the appropriation, and what was the value of the Church. It was preparatory to the appropriation.

MR. DEVON: If the Church was appropriated to the Monastery, and then the value of the Church to be so appropriated.

MR. BADELEY: What does it state as to its value?

MR. MANISTY: It says, the Church of Hale is worth yearly sixty and ten marks: It is at the very end of it, the last sentence.

MR. BADELEY: (To Mr. Devon) Now you produce also from the record office a copy of the King's license to appropriate?

MR. DEVON: It is 1344, the same year as the Inquisition.

Q. (By MR. BOVILL): Where does it come from?

A. The Record Office, London. It is the King's license.

MR. SWAN—recalled.

Examined by Mr. Badeley.

Q. Do you produce the appropriation of the Rectory of Hale to the Abbey of Bardney?

A. Yes.

Q. Do you produce that from the registry of Lincoln?

A. Yes.

Q. What is the date?

A. 1345.

MR. MANISTY: The important part of it is, that it reserves the right, out of the profits of the Church of Hale, to endow a Vicar.

MR. BOVILL: Neither the Rector or Vicar are mentioned.

MR. MANISTY: There was no Vicarage, and the Rectory was vacant.

MR. BOVILL: First of all, it states this Bull of the Pope.

MR. MANISTY: It is a recital of something that was done, the authority for which was said to be lost.

MR. BOVILL: You could not find the Bull?

MR. MANISTY: No; it was lost five hundred years ago.

MR. BOVILL: Pope Clement the 5th was one hundred years before that.

MR. BADELEY: No no; not thirty years.

MR. MANISTY: That is five hundred and odd years since.

MR. BOVILL: The Rector is no party to this, apparently, nor the Vicar; you have got the bishop and the monks. That is what I said; the bishops and the monks do it between them.

MR. MANISTY: "After which, the said religious men humbly besought us, so far as we could, of Pontifical authority, to give our consent to the aforesaid grant."

MR. BOVILL: Then it is that the bishops and monks, first of all, do away with the Vicarage by their act, and now they are going to appropriate the property to themselves. They give something to the bishop. By the next document, they recite their grant of ten marks.

MR. BADELEY: It is only to be on the death of the Rectors of both Churches—Hale and Heckington.

MR. BOVILL: The Rector is no party to it.

MR. BADELEY: The Patron in Ordinary might set it out, according to the Bull of the previous Pope.

MR. MANISTY: Whether an illegal Bull or not.

CHIEF JUSTICE ERLE: We will take that to be a proper appropriation.

MR. BOVILL: They have got a document of 1345, by which the bishop grants to himself a pension of ten marks;—he takes the Vicar's share. They propose to put in two documents, and I happen to have a third, (*alluding to the deed of reservation of the ten marks pension, subjoined to the appropriation, No. 10, page 19.*)

CHIEF JUSTICE ERLE: That is what I was going to say. These parties had the power, at the time, to make union of benefices, to appropriate benefices, and to fix the terms on which these appropriations were made.

MR. BOVILL: We will take the whole; I will put in the intervening one, (reserving the pension). The bishops themselves often raised profits by these appropriations.

CHIEF JUSTICE ERLE: Give us the document, Mr. Bovill, and I will put it in.

MR. BOVILL: 1345. It recites that the bishop was to have compensation, and then grants it. He grants it to himself. "Thomas, by divine permission," and so on (reading document No. 10, page 19).

MR. BADELEY: There is nothing unusual in that.

CHIEF JUSTICE ERLE: Mr. Bovill is getting disrespectful. I was going to say, we need not go very much into the question of motives here; all I have to say, sitting before you, is, whether it is a legal document. A bishop had power.

MR. BADELEY: Now then we have the original endowment of the Vicarage of Hale here, in 1346.

MR. SWAN: I have it here (producing it; document 12, page 19).

MR. BADELEY: "Also, the said Vicar shall have four acres of arable land, in each part of the four parts of the field of Hale, one acre. Moreover, three acres lying in the meadows of Hale, without the place called the 'Rector's Park.' Likewise, all oblations in whatever way pertaining to the said Church. Moreover, the herbage of the churchyard; tithes of calves, foals, pigs, geese, pullets, hens, pigeons, eggs, milk, *orchards, gardens*, flax, hemp, the three mills, bees, ovens; the profit of trades, fowlings, and fishing; cerage, maynport, and the pence of St. Peter; the tithes of garbs coming from the said orchards and gardens alone excepted. And the said religious shall have, in the name of their Church, all tithes of garbs, hay, *wool*, and *lambs*."

CHIEF JUSTICE ERLE: "The tithes of garbs coming from the said orchards." Mr. Devon, what are the *decimis garbarum*?

MR. DEVON: Sheaves.

CHIEF JUSTICE ERLE: Sheaves of the gardens and orchards!

MR. DEVON: There is a dispute about that, whether they are sheaves of corn.*

* Surely it simply meant, that whilst the Vicar was to have the tithes of orchards and gardens, yet, if *corn* were sown in the gardens, the tithe thereof was not to belong to the Vicar.

CHIEF JUSTICE ERLE: The great thing is, there are a great many small tithes mentioned, with wonderful minuteness; and it then states, "All tithes of garbs, hay, wool, and lambs, to the said Vicar in nowise assigned."

MR. BADELEY: Therefore, there is an express exception of wool and lambs. Now we produce a series of Institutions of Vicars from that period.

MR. SWAN—recalled.

Q. Do you produce Institutions from the bishop's registry, of persons presented to the Vicarage of Hale?

A. Yes.

Q. Have you got one of 1346?

A. Yes.

Q. Robert Irnenside?

A. Yes: (to the Vicarage then newly endowed.)

MR. MANISTY: There is a series of them, from 1346 to 1547; we get two hundred years.

MR. BOVILL: And down to the present time?

CHIEF JUSTICE ERLE: Institutions of Vicars commencing at 1346 and ending 1549, and no institution of a Rector?

MR. MANISTY: Mr. Dimock will tell you there is no Rector in that time.

CHIEF JUSTICE ERLE: Mr. Dimock, do you know of any institution of a Rector from the time of the appropriation of the Rectory, till 1549?

MR. DIMOCK: No institution of a Rector.

MR. MANISTY: Nor even then, none to this day.

CHIEF JUSTICE ERLE: According to that, the Monastery would be the Lay-rector during the whole of that time, if these documents are right.

MR. BOVILL: As I understand it, these are mere institutions of Vicars, without any relation to tithes?

MR. DIMOCK: There is no mention, in any one instance, of the tithes; merely entries of the institutions.

CHIEF JUSTICE ERLE: The purpose of that is to shew, that from the time of the appropriation, the Rectory was in the Monastery; and, when the Monastery is dissolved, it closes there.

MR. BOVILL: You say that, from 1346 to 1547, there are institutions of Vicars, and no Rectors. Mr. Dimock, are there Rectors after that time?

MR. DIMOCK: No, certainly not.

MR. MANISTY: The Monastery is dissolved.

MR. BADELEY: And the Rectors become laymen. Now the *Valor Ecclesiasticus*.

CHIEF JUSTICE ERLE (to the Jury): The *Valor Ecclesiasticus* was a valuation taken of lands, &c., when the King foresaw he was likely to become the owner of a great deal of church property.

MR. BADELEY: A valuation to see whether it was worth while for the Crown to lay hold of it.

CHIEF JUSTICE ERLE: You are getting disrespectful. Mr. Bovill was disrespectful in the earlier time; and now, when we come to Henry the 8th, Mr. Badeley is getting disrespectful.—Well, we have got to the valuation of the Church of Hale.

MR. BADELEY (reads from the *Valor*): "*Hale Vicarage*; for a manse, with lands appertaining, 10s.; for oblations, at the time of Easter, £4; for oblations on the four days, with minor oblations, £2 13s. 4d.; for hens, 2s.; for hemp and flax, 13s. 4d.; for pigs and geese, 10s.;" shewing, at the end, £8 8s. 8d.

CHIEF JUSTICE ERLE (to the Jury): The force of that is, it minutely states what the profits of the Vicarage are, and does not mention wool and lambs.

MR. BADELEY: Now, Mr. Devon, do you produce the Ministers' Accounts?

MR. DEVON: I do; the 30th Henry 8th, 1538.

MR. BADELEY: One is in the 30th Henry the 8th, 1538, and one is in 1541—that is the 33rd Henry the 8th.

CHIEF JUSTICE ERLE (to the Jury): He was coming into possession of the Monasteries; but, before that, he had Ministers over the kingdom, to see this property, and they took an account of it, and returned those accounts to him; and these are what are called "Ministers' Accounts." Now, Mr. Badeley, what did they say?

MR. BADELEY: "Farm of Rectory; and for fifteen pounds for the farm of the Rectory of Holle, with all the houses within the said Rectory; and also the demesne lands and meadows to the same pertaining, in Hekyngton and Holle; and all the tithes of grain and hay, wool and lambs, to the same pertaining; with all rents within the vill of Holle, perquisites, and royalties of Courts."

CHIEF JUSTICE ERLE: That is enough. It is the Ministers' Account of the profits of the Rectory of Holle; and, as part of the profits of the Rectory, they say, "wool and lambs."

MR. BOVILL: It is taken in this way: "The farm—it is £15."

CHIEF JUSTICE ERLE: I think some of the ministers rendered an account of the whole thing at so much;—as if they had said, "We will take the Rectory of Hale at so much."

MR. BADELEY: Then, in the 33rd Henry the 8th, you have another, in which it appears: "Farm of the Rectories; and for fifteen pounds, for the farm of the Rectory of Holle, with all houses within

the said Rectory; and also the demesne lands and meadow appertaining to the same, in Hekyngton and Holle; and all tithes of grain and hay, *wool and lambs*, to the same appertaining."

MR. MANISTY: Your Lordship will make a note of one my friend has put in. He has handed one in. It comes in order, 4th James 1st, 1606:—just prior to the grant put in, of James 1st.

CHIEF JUSTICE ERLE: At the end I have added, "All manner of grain, and tithe of wool and lambs."

MR. BADELEY: Now Mr. Swan will produce a terrier of 1612 (it was produced).

MR. MANISTY: The important part of that, as your Lordship knows, is at the end. It is a reference to the three acres in a place called the "Parsonage Park."

MR. BADELEY: "A survey or terrier of all the possessions, glebes, and tithes, belonging to the said Vicarage of Hale aforesaid; taken by Samuel Saunders, Vicar, the Churchwardens, Sidesmen, and other inhabitants there, whose names are subscribed; being given in charge at the visitation holden at Sleaford, by the Reverend Father in God the Lord Bishop of Lincoln, in execution of the Canon.

CHIEF JUSTICE ERLE: "Item three acres more of meadow, lying in a place called the 'Parsonage Park;' part as *appeareth by the ordination of the said Vicarage*, but now in the tenure of one John Cawdron, gentleman, and by him detained from the said Vicarage."

MR. REILLY: There is a difference there.

MR. BADELEY: No.

MR. BOVILL: Instead of being three acres *in* the Park, it is three acres *without* the Park.

CHIEF JUSTICE ERLE: It is lying in a place called "Parsonage Park;" and, in the time of Edward, it was lying just outside.

MR. MANISTY: And also the endowment of 1280, says, "He is *not* to have any land of the Church in the place in Hale-fen, called the 'Park.'" Shewing, therefore, *which* was the endowment the terrier recognised.

CHIEF JUSTICE ERLE: There is that—"lying in the place called the 'Parsonage Park'"—that is the terrier.

MR. MANISTY: The terrier further says, "There belongeth to the Vicarage the tithes of all ancient enclosures, and all manner of tithes whatsoever—except the tithe of corn, hay, wool, and lambs, not issuing within the ancient closes."

CHIEF JUSTICE ERLE: "Not issuing within the ancient closes aforesaid."

MR. MANISTY: And it is taken as admitted the distresses were on the *new* enclosures.

MR. BOVILL: It says, "Item there belongeth to the said Vicarage the tithe of all ancient enclosures within the said parish, and all

manner of tithes whatsoever—except corn, hay, wool, and lamb, not issuing within the ancient closes aforesaid; all which the Vicars, for the time being, have had and received time out of mind.” Now, this is in the year 1612. The observation on it is this, “According to this instrument, of 1346, the Vicarage was not entitled to *any* tithe of wool and lambs.” This shews, that between 1346 and 1612, there must have been some new instrument. That is the import of it.

CHIEF JUSTICE ERLE: Instead of there being a cancellation of the original Vicarage, and an union of it, and the creation of a new Vicarage, with a new endowment, you say all the rights originally had, have been kept and preserved.

MR. BOVILL: Quite so.

CHIEF JUSTICE ERLE: But a terrier is not conclusive about a right; it is the understanding of the Churchwardens, the Vicar, and his farmers. I think it is more like the manorial perambulations, and in the making of terriers, and so on, the dominant interest sometimes adds in a word. What I should say is, the difference between documents of title and the other, is this, the one is title, and the other is evidence of title only.

MR. BADELEY: Now we will take the enclosure of 1699. It is the enclosure of Great Hale and Little Hale.

CHIEF JUSTICE ERLE: Do you call it under a decree, or was it under an award?

MR. MANISTY: It is a decree of the court of Chancery, confirming an award.

CHIEF JUSTICE ERLE: The former award, confirmed by a decree, which was for a long time supposed to be a valid defence.

MR. BADELEY: Well, that is put in.

MR. BOVILL: There is one fact I must ask your Lordship to take notice of. By the award, it appears that at the time there were seventy-six acres three roods and twenty-eight perches, allotted to the Vicar. If you add them together, you will find that is so.

MR. MANISTY: *That* you will find was allotted to him for his private property. No part of the allotments in lieu of tithes. Where the allotments are for tithe, it is so specified. You are mixing the two together.

A long desultory disputation here ensued; Mr. Bovill seeming to contend that the Vicar was not now in possession of all the tithe allotments; upon which, Mr. Manisty proceeded to prove the fact, by calling the Surveyor.

MR. ROBT. CODDINGTON MOOR, Sworn.

Examined by Mr. Badeley.

WITNESS stated that he was a Surveyor, and prepared the map for the apportionment, which was in Court, if necessary to be referred to. That he had occasion then to ascertain what lands were belonging to

the parish; and found that the lands set out to the *Vicar*, at the inclosure of 1699, were still in possession of the *Vicar*.

MR. BOVILL: The whole seventy-six acres?

A. No; fifty-seven.

Q. What has become of the rest of the seventy-six acres you don't know?

A. I know nothing at all.

(The private estate of Benjamin Deakon.)

Re-examined by Mr. Manisty.

Q. You know the twenty-three acres and twenty-three perches in Great Hale, in the award?

A. Yes; called the "Preachers' Plot."

Q. Do you know the land?

A. Well.

Q. Do you know the twenty-three acres and odd in Little Hale?

A. Yes.

Q. Do you find the twenty-three acres and twenty-three perches in Great Hale, and the twenty-three acres and three roods in Little Hale, in the possession of the *Vicar*?

A. Yes.

CHIEF JUSTICE ERLE: That is your case, then?

MR. MANISTY: There is the terrier of 1707, put in by my friend, which I also rely on, to connect that with the endowment.

That is the case, my Lord.

CHIEF JUSTICE ERLE: It is all documentary.

MR. BOVILL: I think so too.

CHIEF JUSTICE ERLE: My own impression is in favour of Mr. Manisty's document. It is what I call document of title, and his other documents all consistent with it. If you, Mr. Bovill, can at all suggest any point, well—but, I take it for granted, the jury would probably follow the judge in his construction of these documents; and, in my mind, Mr. Manisty has produced a valid instrument, and confirmed it by subsequent documents. That is my opinion. If you could strike it out well—but it is *res judicata*.

MR. BOVILL: I had myself intended to invite your Lordship's opinion upon the matter, but I suppose it is my friend's province.

CHIEF JUSTICE ERLE: Not at all; and there is no man alive so thoroughly aware of the rights of counsel and judges as yourself; but I have had my mind on these documents for some hours.

MR. BOVILL: Of course, if your Lordship has got an opinion—

CHIEF JUSTICE ERLE: I was going to say, in my opinion it was so,

that Mr. Manisty's documents prove his case; but if the Court should be of opinion I was wrong, they would grant a rule. I do not see what else can be done upon it.

MR. BOVILL: There might be a special case stated for the opinion of the Court.

MR. MANISTY: There is no occasion for the expense of a special case.

MR. BOVILL: There has been the reputation, and judgment, and so on; they must displace all that.

CHIEF JUSTICE ERLE: You have those decrees, and there are the proceedings. If the Court are of opinion I am wrong, they will deal with the matter as they think fit. Perhaps Mr. Manisty will say they shall have power to draw inferences.

MR. MANISTY: To draw any inference if there is any evidence.

CHIEF JUSTICE ERLE: I do not wish to prejudice you, Mr. Bovill, by this. You can move, and if the Court have any doubt about it, they will have liberty to grant any rule, and to draw any inference, they may think justice requires.

MR. MANISTY: I think so; if your Lordship takes that course we shall be satisfied.

CHIEF JUSTICE ERLE: I do not think there is anything wrong in giving an inferring power to the Court, but there is very little parol evidence. I do not think I should be doing wrong to Mr. Manisty in taking that course. I have felt, at times, and seen so much injustice in referring the evidence, that I am very cautious, but the case would go with my opinion to the jury. The effect of these documents is, in my opinion, in favour of Mr. Manisty. He is for the plaintiff. There will be verdict for the plaintiff, Mr. Bovill to have liberty to move the Court; and, if they should think there is any real doubt on this evidence, then they will grant such rule as they think justice requires.

MR. BOVILL: Just so.

MR. MANISTY: That they think justice requires.

MR. BOVILL: Yes, just so.

CHIEF JUSTICE ERLE (to the Jury): Gentlemen, I congratulate you in having got through in half a day, what everybody said would take two days.

MR. MANISTY: We will take a verdict nominally for five guineas, with all necessary certificates. Your Lordship will certify for a Special Jury?

CHIEF JUSTICE ERLE: Yes. (After a short pause.) I will tell you what I have written. I say I think at present the verdict should be for the plaintiff; and the jury are considered to have adopted that view. Mr. Bovill has liberty to move against that, and, if the Court think there is any real doubt, they will grant such rule as they may think justice requires.

The Court then adjourned.