A SUMMARY OF THE LAW RELATING TO TITHES.

By A. E. C. Prescott.

THE practice of supporting the Church by a contribution by the laity of a tenth part of their income is probably of Jewish origin. In England tithes were at first paid voluntarily, but during the later Saxon times they were given by law to the Church, and became payable only out of such things as yield with the aid of cultivation a yearly increase by the Act of God, to the ecclesiastic whose duty it was to provide in that place for the cure of souls.

The Common Law further restricted the tithe by excepting payment in the case of things *feræ naturæ*, animals kept for pleasure or curiosity, and things of the substance of the soil, such as bricks, earthenware pots, etc. In the course of time, also, monastic lands became exempted from payment, and continued so after the dissolution of the monasteries, whether they had fallen into the hands of the Crown or its grantees—in the latter case only so long as the land remained in the hands of the owner.

There are three kinds of tithes—prædial, mixed, and personal. Prædial are those which arise merely and immediately from the ground—as grain, hay, wood, fruits, and herbs; mixed are such as arise from things immediately nourished by the ground, e.g. colts, lambs, calves, chickens, milk, cheese, eggs; personal are such profits as arise from labour and industry, being one-tenth part of the clear gain, after charges deducted. Distinction, also, is sometimes drawn between "great" and "small" tithes. Great, or "rector's," tithes are ordinarily those of corn, hay, and wood; small, or "vicar's," tithes include all other prædial tithes, and also mixed and personal tithes. The names "great" and "small" are derived from the quality rather than the quantity of the tithes in the particular parish.

Owing to the inconveniences which attended the assessment and collection of tithes, resulting from the development of scientific cultivation and a greater variety of crops, voluntary agreements came to be made between incumbents and tithe-payers, whereby the former accepted (under the name of "modus") either a capital sum or an annual payment in money or kind in lieu of the one-tenth. Such agreements, however, being voluntary, could not operate to bind the successors of the parties to them, and for this reason the voluntary system was superseded by the provisions of the Commutation Acts.

The Tithe Act, 1836, substituted as an equivalent for the tithe a rentcharge varying in proportion every year according to the average price of corn as quoted in the *London Gazette* at the beginning of the year. If the commutation was not effected voluntarily, it was to be compelled by the Tithe Commissioners appointed under

the Act. A provision was also included whereby clergy entitled to tithes could commute them for an equivalent of not more than twenty acres of land. The Act, however, did not extend (unless a special parochial agreement, approved by the Commissioners, were entered into) to tithes of fish or fishing, personal tithes other than tithes of mills, mineral tithes, or to any payment instead of tithes due in the City of London, or to any permanent rentcharge or other rent or payment in lieu of tithes calculated on the rent or value of any house or lands in any city or town, or to any lands or tenements the tithes whereof had been already perpetually extinguished under any previous Act. The Act, therefore, substituted a tithe commutation rentcharge for all tithes except those above enumerated, and any of these excepted tithes can be brought within the operation of the Act by special provisions inserted in parochial agreements.

Thus although the ancient system of tithes has become practically extinct, the property which they represented is still provided for by an equivalent in the form of a rentcharge. In 1925 an Act was passed the principal objects of which were the stabilization and ultimate extinguishment of this rentcharge. Stabilization for a fixed period ending on the 1st of January, 1926, had been ensured by the Tithe Act, 1918, the sum payable up till that date being ascertained in the method prescribed by the Act of 1836. Under those circumstances the amount of a tithe rentcharge in 1926 would have risen to £130 for every £100 commuted tithe rentcharge. On the other hand, relief in respect of rates (under the Ecclesiastical Tithe Rentcharge (Rates) Act, 1920) would have disappeared on the same date, and what the tithe-owner would have gained by the increase he would have lost in the payment of rates. The 1925 Act, therefore, stabilizes the tithe at £105 for every £100 commuted rentcharge, and requires the tithe-payer to provide an additional £4 10*s*. per annum towards a sinking fund designed to effect the final extinguishment of the tithe in eighty-five years. Meanwhile the statutory exemptions in respect of local rates are continued substantially the same as before.

The tithe is payable half-yearly, on the 1st of April and the 1st of October, and under the Tithes Act, 1891, it is payable only by the owner of the lands out of which it issues, notwithstanding any agreement to the contrary between him and the occupier; any such contract made after the Act is void, but if it was made before the Act the occupier is liable to pay the amount of the rentcharge to the owner, in which case the latter must serve a notice of such liability both upon the owner of the rentcharge and upon the occupier, who may appear to be heard in the County Court before an order for payment is made. Payment has now, under the Tithe Act, 1925, been centralized by being transferred from the various incumbents to the Central Fund of Queen Anne's Bounty, which has statutory authority to collect and distribute the tithe, and to have the custody and investment of the sinking fund above referred to.

The method of enforcing the payment of the tithe rentcharge is provided for by the Act of 1891. Under that Act, if any sum is due in arrear for not less than three months, the person entitled may apply to the County Court (whatever the sum involved) and the Court may order that sum to be recovered. This is the only method of recovery. If the lands in question are occupied by the owner, the Court will appoint an officer who may distrain (i.e. seize a sufficient amount of goods to satisfy the debt) for the sum ordered to be paid. If there is no sufficient distress, the person entitled may proceed to obtain possession of the lands. If, on the other hand, the land is not occupied by the owner, the Court will appoint a Receiver of the rents and profits of the lands in question and of any other lands occupied and owned by the same owner in the same parish. Application to the Court for an order under the Act may be made by the tithe-owner or his agent (who need not be a solicitor), but no costs of a solicitor so applying will be allowed if the amount claimed is paid without further proceedings, nor can any sum be recovered in this way unless proceedings have been commenced before the expiration of two years from the date when it became payable.

Other provisions of the Tithe Acts are directed towards the redemption and remission of tithe rentcharges. Payment may be redeemed at the instance of either party by an agreed capital sum to be fixed, in default of any agreement, by the Ministry of Agriculture and Fisheries, and provisions are included for facilitating redemption on the basis of receiving an equivalent income from Government securities. Further, it is now possible for a tithe rentcharge to be remitted when it exceeds two-thirds of the annual value of the land out of which it arises. If the County Court is satisfied that, if the sum claimed is paid, the total amount paid for twelve months before the claim was made will exceed two-thirds of the annual value of the land, it must order a remission of so much of the claim as is equal to the excess.

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