ART. XV.—*A nineteenth-century Tithe Dispute and its significance : The Case of Kendal.* By ERIC J. EVANS.

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I.

TITHE disputes were a very common feature of early nineteenth century life. With the development of the enclosure movement and the growth of scientific farming, the traditional tenth payable to rector, vicar or lay impropriator once again became a live issue. The improving farmer quite naturally resented having to pay more to a tithe owner who had done nothing to ensure that the land from which he drew his tithes was more productive. Thomas Thompson, a leading nonconformist banker from Hull, put the farmer's case for him in simple terms: "Is it equitable that, whenever I work for myself, I should be compelled to work for another person also?"[1] Tithe was listed by Adam Smith as one of the "effectual bars" in his chapter on discouragements to agricultural improvement.[2] Arthur Young argued as early as 1774 that tithing in kind dampened all ideas of improvement,[3] and returned to this theme frequently in the *Annals of Agriculture* of the 1780s and 1790s.

For his part, the clergyman or other tithe owner resented that, in most parts of the country, tithing in kind was being replaced by money compositions or fixed payments at the very time when farming profits were improving. In his view, the value of the tithe, long since less than a tenth, was declining to a derisory

[1] Thomas Thompson, *Tithes Indefensible,* 3rd ed., York, 1796, 50.
[2] Adam Smith, *Wealth of Nations,* 1776. (Everyman ed., London, 1910), vol. i, 347.
[3] A. Young, *Political Arithmetic* (London, 1774), 18.

fraction of its real worth. Towards the end of the eighteenth century, believing tithe revenues to be static or falling while agricultural productivity increased, many tithe owners began a campaign to reassert their rights to a full tenth of the produce. If farmers objected, as they frequently did, that the payments they made had been made for centuries, had acquired legal force as "valid moduses" and were therefore unalterable, the tithe owner's only redress lay in the courts of law. It was because of this that tithe suits were instituted, and often bitterly contested, in the equity Courts of Chancery and Exchequer. Tithe cases there had always been, but the new climate of opinion served to ensure that they now received much more publicity. They opened up fundamental questions about the rights of tithe owners and whether, as many radicals of the time forcibly argued, tithes should be abolished or commuted, being far more trouble than they were worth. As Professor Best says, "Many more books and pamphlets must have been written about tithes than about any other of the conventionally distinguished departments of church affairs."[4]

Tithe disputes undoubtedly added fuel to the fire of controversy about what seemed to many to be an old and outworn system. While radicals argued that the church had misused tithe revenues and had no right to them, many observers, inside and outside the Church of England, came to believe that reform was essential. William Pitt worked on various schemes in the 1780s which he later dropped to placate a hostile episcopal bench in the Lords, but Bishop Watson of Llandaff, perhaps the most knowledgeable agriculturalist on the bench, supported reform.[5] It seemed

[4] G. F. A. Best, *Temporal Pillars* (Cambridge, 1964), 465. For the radical attack see, among an extensive literature, *The Extraordinary Black Book* (London, 1831), 9. Anon., *The Claims of the Clergy to Tithes and other Church Revenues Examined* (London, 1830) and, most knowledgeably, William Cobbett, *A History of the Protestant Reformation* (2 vols., London, 1829).

[5] Best, *op. cit.*, 188.

anachronistic and unnecessary to preserve the system of tithing in kind, and many tithe owners preferred to substitute realistic and flexible money payments which kept pace with agricultural profits. Tithe disputes which came before the courts of law provided the most public and perhaps the most damning evidence that too often the old system failed to cater for the needs both of farmer and tithe owner. Untypical as they undoubtedly were of the many parishes in England where tithe matters were negotiable to the satisfaction of all parties, they showed how easily the system could break down when, for example, a new rector entered a living determined to sweep aside old customs or when a lessee sought a way of improving the profits from his bargain with the tithe owner.

The long tithe dispute in the parish of Kendal was something of a *cause célèbre*. Because it took place during a period when solutions to the tithe problem were being actively discussed, it was followed in parliamentary circles with much more than usual interest. It was frequently cited there as an example of the tortuous problems implicit in the old system which cried out for reform. The manner of the eventual settlement — a private Act for commutation of the tithes rather than a decision by the Courts — also proved to be of interest and instruction to those seeking a national settlement of the tithe problem. It is, therefore, of more than local interest to understand how the dispute arose and how it was resolved. Although the Kendal problems were on a larger scale than most of the hundreds of contemporaneous tithe disputes in England and Wales, they do provide a useful case study of the frailties of the old system. It is hoped that a study of the case will help to illuminate more general problems arising from the tithe system immediately prior to the Tithe Commutation Act of 1836.

II.

The tithe question was seriously raised for the first time in Kendal for over a century in 1817, when the lessees of the profits of the rectory, two sisters, Mary and Ann Lambert, began a suit in the Exchequer Court against some tenants in the townships of Scalthwaitrigg and Hutton for non-payment of tithes of hay, potatoes and turnips.[6] These tithes were alleged to have become payable since the enclosure of Kendal in 1812. Although the tenants, fearing a long and costly struggle, joined together in a bond to defend their rights at mutual expense, the plaintiffs failed to pursue the case with any vigour. The action seems to have been suspended after 1821 without any conclusion, and with only small costs incurred. If any Kendal farmers believed that a challenge to their property had been beaten off, they were soon to be disillusioned. The Lamberts, who owned a 134 acre farm in Grayrigg, a fell township in the parish, some six miles from Kendal itself and who were therefore well acquainted with the local situation, returned to the fray early in 1824 with a more serious threat. An action was begun against Richard Fisher of Scalthwaitrigg for payment in kind of all manner of tithes. In the usual manner of such proceedings, a test case was begun to determine the legal situation, in the hope of obtaining a favourable verdict which would persuade the other landowners and tenants in the area that resistance was futile. Thus, for a relatively modest outlay on one or two cases, a whole parish might be persuaded to accept much heavier tithe assessments. The sisters, who had taken over the lease from Trinity College, Cambridge, from their father, and renewed it in 1821, had learned that the College's policy was to encourage

[6] The material for the Kendal dispute is drawn from ten boxes of solicitors' papers, as yet unsorted and uncatalogued, deposited in the Westmorland Record Office. The general reference is WD/AG, Kendal Tithe Papers. Extracts and references for the dispute are from this source unless otherwise indicated.

their tenants to realise the full extent of their tithe income. The College as a large impropriator knew very well that all over England the arteries along which lucrative tithe revenues flowed had become hardened by the accretions of traditional payment. Although the law recognised the inviolability of certain customary payments or "moduses", the College knew that many so-called moduses would not be upheld in any court, and determined to put some of these to the test. There was a further consideration also. As has been seen, the old tithe system was coming under increasing attack. If commutation were to come, as few doubted eventually it would, it would be to the tithe owner's advantage to establish definitely what his precise rights were so that an advantageous commutation could be negotiated. This also led back to the validity of the modus. In a large and sprawling parish such as Kendal, where customs and alleged moduses abounded, and where collection of tithe in kind involved enormous geographical problems, the stakes were indeed high.[7] The landowners of the parish believed that the tithes in the early 1820s realised no more than £300 to the lessees of the rectory. Although no account books survive for the period, this seems to be a realistic estimate. The impropriators, however, calculated that, with customary payments out of the way, the rectory could be worth £3,000 a year in tithe income alone. It is hardly surprising that the College should encourage the Lamberts in their quest. In 1822, the lessees began to refuse customary payments in lieu of tithe of corn, hay and certain other produce. Preparation of their case against Fisher began shortly after this.

Reaction was swift. Many leading landowners, or their agents, immediately saw the implications of the wide-ranging suit, and a meeting was called to consider

[7] Kendal was in fact, at 68,360 acres, the seventh largest parish in England and Wales, according to the 1851 Census.

further action. Out of this emerged a committee of landowners pledged "to defend themselves from the iniquitous claims of the Master and Fellows of Trinity College, Cambridge". Edward Wilson of Abbot Hall, Kendal, was elected chairman. The purpose of this body was to prepare the best defence available. The considerable financial support which would be needed was to be obtained by rates levied on the landowners according to size of holding. The aim was to involve all the landowners in the parish by alerting them to the common dangers presented by the tithe suit. A holding burdened with substantial tithe payments would be less attractive to a tenant, and the rental value of the land would be diminished. The Kendal committee, though it managed to attract a sizeable number of adherents, was never satisfied with the commitment of the bulk of the landowners in such a huge and rambling parish. In 1831, when matters were approaching a climax, the committee testily observed:

> For the future they [the landowners] must use more exertion in supplying necessary information with respect to their farms and they must also prevail with their tenants to comply more readily with the course of proceeding which is pointed out to them. Farmers labour under a delusion in supposing that they have no interest in the result of the proceedings against them.

In 1824 and 1825, however, it was necessary for the committee to establish the landowners' rights in respect of the new claims. The tithe farmers had demanded payment of all manner of tithes in kind from a parish which had hitherto overwhelmingly made small customary payments in lieu of tithe. In only five of the twenty-seven townships was corn tithe acknowledged as payable in kind. Elsewhere small customary sums, known as "meal" and "maille" silver payments, had been previously tendered and accepted. In addition, payment of 1d. per acre in lieu of tithe of hay was almost universal. Undoubtedly, many had

managed to avoid payment altogether. As Richard Willison, a tenant from Underbarrow was to put it with a nice mixture of truculence and ignorance in June 1831 when the suit was extended:

I have got a dirty thing they call a Writ abought some Tith. I fancy there must be some new Act. I suppose as we have farm'd this place for near 200 Years and never heard tell of such a thing before as Tithe.

It was crucial for the parishioners to discover whether these moduses and exemptions were valid in law. This was an arduous and expensive business involving the employment of agents to carry out searches for relevant documents and also asking counsel for advice on the defensibility of the payments. The institution of tithe suits usually had the effect of shifting the burden of proof from the plaintiff to the defendant, which is perhaps why they were so attractive to many who had the means of carrying them on. To avoid being required to account for tithe in kind, a defendant had to prove either that the plaintiff had no right to the tithes in question or that they were covered by customary payments valid in law. Tithe law was so cumbersome and confusing that the burden of proof of a valid modus was invariably a lengthy and costly procedure. In the early nineteenth century, many lawyers were able to provide themselves with lucrative employment by a sole concentration on tithe law. The employment of an expert in this field was considered essential, and such experts were able to command the large fees of a specialist to display their knowledge of case law and precedent.[8] They would conduct the case when it came to court, but at an earlier stage they also provided their opinions on the likelihood of success

[8] On the legal complexities of the situation see E. J. Evans, *A History of the Tithe System in England 1690-1850*, Ph.D. thesis, University of Warwick, 1970, 71-93. Various works were produced early in the nineteenth century to help lawyers find their way through the maze. The most useful are H. Gwillim, *A Collection of Acts and Records respecting Tithes* (4 vols., London, 1801) and F. Plowden, *The Principles and Law of Tithing* (London, 1806).

should the action be fought to a finish. For this preliminary service they charged anything from two to five guineas.

In May 1825, the services of three tithe specialists, John Bell, W. F. Boteler and Henry Bickersteth, were retained. They gave advice about the best means of stating the defence against the claim. Despite suggesting that a "Cross Bill" be instituted to ensure that the plaintiffs stated their title precisely, none of these experts were hopeful that the defence of a legally binding modus could be sustained. As Bell and Bickersteth argued in giving their opinion in 1825:

> The difficulty in this case is to prove that any particular sum has been payable for particular lands from time whereof the memory of man is not to the contrary, for it ought to be proved that the same sum has been paid from the same lands from time immemorial — and the parties not being able to do this will we think be an insuperable difficulty in the way of establishing these payments as moduses.

They were to be proved right. Although the tithe committee thought it had discovered a high card in an Exchequer suit in 1690-1 which established the rector's right only to meal silver payments without reference to the true value of the tithe, this could be trumped by the impossibility of proving "fixed and unalterable payment". Delays were sought and obtained, cross bills filed and witnesses examined at Preston to obtain further testimony on meal silver payments, but to no avail. In November 1830, the Vice-Chancellor decreed for the plaintiffs with costs in the most valuable issues in dispute.

Had this been the end of the dispute, it would have hardly have merited separate study, being indistinguishable from hundreds of similar tithe cases of the same period, usually (but not invariably) decided in favour of the tithe owner. It was the decision of the proprietors to appeal which instituted a series of developments which brought the Kendal tithe dispute

to the notice of those currently wrestling with the national problem of tithe commutation. The progress of the Kendal affair helped to mould influential opinion on the tithe question in the 1830s. It was to be cited as perhaps the best example of the bitterness and strife which the existing tithe laws engendered, and certainly played its part in convincing Parliamentary opinion that commutation was essential.

The tithe committee after making its decision to fight on had printed an anonymous letter to the lessees which hinted both at their current debts and the prospect of more to come. It was clearly an attempt to frighten them into a settlement despite their legal success:

> I fear, Miss Lamberts, some wag has been hoaxing you. A single estate or two, which you have selected to try an experiment upon must not be mistaken for the whole parish. You have been about six or seven years in law with two individuals, and what have you really gained? I should think a heavy loss. The Vice-Chancellor's decision will be appealed against to the Lord Chancellor and no doubt he will grant an issue to try your claims before a jury of the County; and then and not till then will the parish give up the contest. You may rest assured that every inch of ground will be contested — that your circular letters will not intimidate — your calling for an account of tithe will not be obeyed, and your sitting to receive them will produce no cash, unless you are willing to take tithe meal silver which will then be tendered to you. . . .

The lessees' demands for tithe continued to be met with refusal, and the tithe committee began preparation for an appeal to the Lord Chancellor. It was at this point that a new factor emerged which changed the whole complexion of the dispute. Parliament was beginning to concern itself with the problems arising from the tithe system. In 1830 and 1831 Lord Tenterden, after studying various lengthy tithe disputes of which Kendal was one, began discussions on limiting the rights of tithe owners to re-establish long

dormant claims. In 1832, the Act which bears his name was passed, limiting tithe owners' claims to those of less than thirty years' duration.[9] There was, however, a period of grace upon which the Lords insisted. For one year — from August 1832 to August 1833 — ancient claims could be pressed. The effect was dramatic. Indeed, it began while the Bill was being discussed. Tithe owners all over the country rushed to institute claims for tithe before the floodgates closed. Nowhere was this more apparent than in Kendal. Trinity College decided in 1831 and 1832 to establish claims against everyone whom they considered liable to make tithe payments in the previous five years. Nor was this all. The Vicar of Kendal, Rev. John Hodgson, also sought redress in the courts. In the 1820s, the tithe committee had been able to use the vicar's presumed amiability to argue that many tithes claimed by the Lamberts were payable to the vicar. To this extent, they were able to play off one tithe owner against another. Now Hodgson calculated that he might benefit from the ambiguities of tithe ownership revealed by the dispute. In all, about 1,200 suits were instituted in Kendal between 1831 and 1833. For the first time, many landowners who were non-resident began to appreciate the seriousness of the situation. They had, after all, mostly let their lands as virtually tithe free. Letters flooded in to Messrs Wilson and Harrison of Kendal, solicitors acting for the tithe committee in charge of the defence, from landowners and tenants faced with new claims. Lord Lonsdale's agent, Joseph Benn, wrote in November 1831 that "Lord Lonsdale will be ready to agree to any arrangement that may be entered into by the majority of landowners in the parish" for the purpose of defending their rights to exemption from tithe. This support

[9] 2 and 3 Wil. IV cap. 100. For a discussion of the operation of the Tenterden Act, see Evans, *op. cit.*, 337-339.

was particularly welcome as the Lowther influence in Kendal as in much of Cumberland and Westmorland was very great, and Lowther funds would be a welcome addition to the committee's assets.

The committee had been far from idle in the face of this fresh onslaught. It was decided to enlist the aid of Members of Parliament to bring the plight of the Kendal parishioners to national attention. Especially valuable was William Blamire, M.P. for East Cumberland, and allegedly the most knowledgeable man in the country on the subject of tithes. His involvement with the Kendal affair was to deepen that knowledge still further and fit him admirably to become the first tithe commissioner appointed under the 1836 Commutation Act. He was involved in the lobby to obtain legislation on the subject of tithes, and was able to use the Kendal case as publicity in the cause. He advised the committee to lay the grievances of the Kendal parishioners before Parliament. Accordingly, a petition was laid before the Commons on 13 December 1830 calling upon Parliament "to enact some reasonable period of limitation beyond which no right to Tithes in kind shall be established, a measure that would secure to Tithe Impropriators all just demands, and would protect the Petitioners in possession of their property".[10] A few days later, a petition from the townships of New Hutton, Longsleddale and Whinfell noted that a modus had always been considered as payable in Kendal in lieu of tithe of wool. Now that after 250 years it was to be challenged the petitioners "view the attempt with considerable alarm inasmuch as they are likely to be involved in endless litigation".[11] It was also pointedly noted that the estates from which tithes were now demanded had been advertised for sale in the past as

[10] C[ommons] J[ournals], LXXXVI Part I, 1830-31, 13 December.
[11] *Ibid.*, 24 December.

tithe-free "and upon faith of their validity and great antiquity have realized a much higher price than they otherwise would have done". In the summer of 1831 more petitions were forthcoming from Kendal for the enactment of "some reasonable period of limitation beyond which no right to Tithes in Kind shall be established".[12]

It was quite common, of course, for petitions merely to be read over, ordered to lie on the table and then be forgotten. In this case, the Kendal petitions were presented at the same time as many others, especially from Wales, the south west, Essex and Sussex, all complaining of specific grievances suffered under the tithe system. There can be no doubt that they had a cumulative effect. After 1830, it became ever more clear that legislation would be passed, although it was only by the discovery of inadequacies in the partial solutions offered by Tenterden and others that a majority of members became eventually convinced of the need to full, and, if necessary, compulsory commutation. Certain of the petitions brought forward from Kendal and elsewhere were debated on the floor of the House.[13] On 10 February 1831, Lord Lowther was able to introduce the subject after the presentation of a further petition from Kendal whose parishioners "had lately been compelled to pay tithes for property which had not been called upon to pay tithes for the space of 500 years before".[14]

In 1833, when the effects of the Tenterden Act were being felt, the Kendal case was once again used as exemplar of the chaos it created. Blamire introduced a Bill in August to postpone all suits instituted by the clergy during the period of grace.[15] Although the

[12] C.J., LXXXVI Part II, 1830-31, 13, 14 and 30 July, 25 August and 19 October.
[13] See, for example, *Hansard*, 3rd series, 1830, II 29-48 for a debate on the inconveniences of the tithe system.
[14] *Ibid.*, 116.
[15] *Hansard*, 3rd series, 1832, XX 608-610, 709-711 and 794-796.

Conservative interest was strong enough to defeat a proposal which seemed to them a clear infringement of the rights of property, Blamire elicited from the Solicitor-General, Sir John Campbell, an admission that "a sort of infatuation" to establish long-dormant claims had seized the clergy. Although he could not act to prevent it, he conceded that "the evil was of a tremendous kind, and it was as mischievous to the Church itself as to the people". Blamire continued to look for publicity to effect a change of attitude, and was once more able to draw upon the Kendal experience. He obtained petitions from Kendal which were sent to the Lords, drawing their attention to "a course of litigation vexation & expense which if permitted to proceed must not only occasion the sacrifice of a considerable portion of their property but endanger the peace and safety of the inhabitants of the parish & the existence of the Institutions of the County". It was exactly this final extension of the argument which Blamire hoped would have the desired effect on a cautious legislature held back by the jeremiads of the Members for the universities of Oxford and Cambridge, and in particular Sir Robert Inglis. Inglis required but little incentive to speak against any tithe reform, as an infringement of the rights of property. As Oxford and Cambridge Colleges held a very large number of impropriations the pressures on Inglis were obvious enough. Blamire took care to see that a Kendal petition bearing 1,126 signatures was inserted in the *Morning Chronicle* at the end of August and wrote to the tithe committee:

I do wish that the Lords had passed the Bill as I am certain that a very strong necessity exists for staying these proceedings. I shall commence proceedings again upon the Meeting of Parliament should I find the mischief as considerable as I anticipate — and I shall endeavour to get the parties interested in the petition in good time. I have every reason to believe that the government will take the matter up and do something. Indeed, I am disposed

to think that they will be compelled to adopt this step. . . .

Such compulsion, however, took time, and while the campaign to increase righteous indignation against tithe-grasping impropriators and clergy continued, the Kendal parishioners were still trying to obtain a reversal of the Vice-Chancellor's verdict in Lambert v. Fisher. The defendants based their appeal against the 1830 judgment on complicated technical grounds surrounding the precise presentation of the plaintiff's evidence, involving the non-production of material which might have been of use to the defendants. Such was the complexity of tithe laws that it was never difficult to find grounds for appeal. Tithe cases often developed into wars of attrition with both sides hoping to wear the other down and, more particularly, to frighten the adversary by steadily mounting costs. As late as 1833, Joseph Benn was writing to the solicitors for the tithe committee agreeing with their view that in spite of all adverse decisions and the present "very discouraging state of the case", resistance should be continued: ". . . it would be bad policy to give in yet, as it is just possible that a continued resistance may make the College better to deal with". The defendant's appeal was heard over three complete days in March 1832. The Chancellor upheld the verdict in favour of the plaintiff for tithe of the valuable corn and wood. However, he opened a chink of light for the parishioners in decreeing that separate trials should be held before a jury on the validity of hay and small tithes. The Chancellor considered that certain evidence of particular tithes which should have been kept separate from the main body was in fact confused with it, thus obscuring the Vice-Chancellor's view of the evidence. Although new trials meant greatly increased expense, there was a popular belief, shared by the tithe committee, that a jury of solid country gentlemen would be more favourably disposed to

defendants in a tithe suit than a judge. It was usually considered a good tactic to press for a "trial of issues" rather than present a clear-cut case which an equity judge could confidently determine.

There was no doubt, however, that the College and its lessees had come off best in the dispute. If the final settlement of the case was to be made outside the courts, it was clear that they would now be in a position to drive a hard bargain. Informal negotiations for an out-of-court settlement had begun at the end of 1831. The first move appears to have been made by the College which caused Joseph Benn to reflect, probably wrongly, that "It would appear from the College offering to compromise that they are getting rather sick of their multiplicity of suits." The tithe committee proposed that a permanent commutation of tithes should be effected throughout Kendal and proposed to offer the rectors a sum of £1,000 annually, but fluctuating according to the prevailing average price of wheat. Although this offer represented a three-fold increase in the assessed current annual value of the profits of the rectory, it was about one-third of what the College hoped it might be able to get, and less than half of what it could now confidently expect. The Bursar, Thomas Musgrave, replied in December 1831 that the College would "cordially rejoice if an arrangement could be obtained without further litigation". However, the Kendal offer was "so wholly inadequate in the present case, so utterly disproportionate to the value of the matters under dispute and so much at variance with the condition in which we expressed our willingness to enter into negotiation of an amicable settlement" that it could not possibly be entertained.

Negotiations were suspended for over a year; but the delay only served to underline two indisputable facts: a negotiated settlement would still be easier

and cheaper than one imposed by the courts, and in any negotiation the College held most of the high cards. Although the tithe committee's resources were considerably greater than those of most individual defendants in a tithe case, it became increasingly clear that the College would neither be broken by delay nor frightened into submission by the threat of still more appeals. Negotiations were seriously resumed in the spring of 1833 when the committee was authorized by a public meeting of Kendal landowners to make a fresh approach to the College. Wilson accordingly communicated that the landowners would be prepared to come to some arrangement for the tithes, provided that certain meal silver payments could be considered valid. This proposal got short shrift, Musgrave replying on 24 May that "The College cannot take your proposal respecting the meal silver into consideration at all."[16]

By the summer of 1833, the discussions had taken a new turn. The committee realised that a considerably improved offer had to be made, and accordingly suggested £2,000 as an appropriate settlement. The sum was to be divided between rector and vicar, and was to be considered as a variable annual payment, fluctuating with the price of corn over an agreed period. The ultimate sanction of a private Parliamentary Act was to seal the bargain. The College expressed much more interest in an offer which, in cash terms at least, now seemed realistic, and negotiations continued throughout the winter of 1833-4. The College was unhappy with the initial sum on offer, arguing that a fresh valuation of the tithe would have to be made before agreement could be reached on the proportion of the gross value which the College would accept. Edward Wilson contended on behalf of the landowners

[16] Trinity College Muniments 40/16. The College has a small amount of correspondence relating to the case in this bundle and also in 40/18. The correspondence supplements the much larger collection in Kendal.

that any valuation of the tithes which should not include the great cost and the many sacrifices which the lessees must submit to in their collection and the important Ingredient of the Tithe Owners being divided between the Rectors and Vicar must furnish a very inadequate Criterion of the Value to the Rector.[17]

The other problem was the outstanding suits. Wilson argued that "all legal proceedings . . . be stayed pending the survey and valuation".[18] The College was happy to accept this condition in return for a full valuation with the solitary exception of the original suit Lambert v. Fisher. In the event, the College allowed this suit to lapse in 1836.

All of these points were fully considered at a meeting held in London on 28 and 29 February 1834, and a compromise reached. A Bill was hurriedly drawn up, amended after consultation with Lord Shaftesbury who agreed to sponsor it in the Lords and introduced in May 1834. The Kendal Corn Rent Act, which had a rapid passage through Parliament in the same year, contained elaborate arrangements to put into effect the agreement reached.[19] The vast majority of the tithes in the parish were to be valued under the direction of two commissioners, one each to be appointed by the landowners and the tithe owners. The tithes were to be valued as "if they had been rendered in kind to the tithe owner". The Act then stated that 56 parts of each 75 should be allotted to the tithe owners. This awkward fraction, increased from an original settlement of two-thirds, was the result of protracted wrangling over the compensation for arrears of tithe since the dispute began. Only a small number of moduses in lieu of tithe hay in Kentmere, Nethergraveship and Bradley Field were accepted by the tithe owners and established as valid by inclusion in the Act. The corn rent was ascertained by assuming that "every rent to be awarded . . . [is] to be of the

[17] Wilson to Musgrove, 9 October 1833.
[18] *Ibid.*, 4 January 1834.
[19] 4 Wil. IV cap. 18.

value of such numbers of bushels and decimal parts of a bushel of wheat, barley and oats as the same would have purchased at prices mentioned as aforesaid, in case one-third part of such tithe rent had been invested in the purchase of wheat one-third thereof in the purchase of barley and the remaining third part thereof in the purchase of oats''. Average corn prices over the previous ten years were to control the corn rent, and provision was made for revisions every ten years to take account of changing price levels.

The passing of the Act seemed to have settled the issue. Events were to prove, however, that the Act remained open to different interpretations of detail, and a further seven years elapsed before each landowner knew how much he should pay, and the titheowners exactly what they might expect.

It was never envisaged that the formulation of an award would be quickly completed. Surveying nearly 60,000 acres in twenty-seven townships was a major operation, and took almost three years to complete. Moreover, after 1836 the demands made on the time of the tithe commissioners, surveyors and valuers was greatly increased since the national progress of tithe commutation put their specialist skills in ever greater demand. Most commissioners and valuers worked simultaneously on more than one tithe commutation and some were engaged on more than a dozen at once.[20] In Kendal the commissioners, John Watson and Henry Teal, worked in bursts, usually of a week or so, sometimes for a month at a stretch. Working at this pace, the preliminary work of surveying and valuing was complete by the middle of 1837. The process of translating land values to tithe equivalents, however, slowed the process and led to an open rift between Watson and Teal. The main problem concerned the

[20] For fuller information on this somewhat neglected aspect of agricultural history see Evans, *op. cit.*, 386-390, and F. M. L. Thompson, *Chartered Surveyors, The Growth of a Profession* (London, 1968), 100-107.

tithe of hay and lambs, produce which was particularly important in an extensive upland parish. When the commissioners failed to agree on the amount of tithable produce, the matter was referred to the land surveyor appointed under the Act as umpire, Richard Atkinson. The dispute concerned the amount of the deduction which should be made to compensate the expense of collection in a large parish. Atkinson took the sensible precaution of consulting tithe commissioner William Blamire who had in any case taken a keen interest in the Kendal affair. His letter of 1 August 1838 outlined the main points of divergence:

The tithe owners insist that in estimating the value [of hay] I should take into account the loss of manure the tenant would sustain by the tithe being taken in kind and the inconvenience he would be put to in making his 9/10ths into Hay and that the combined effect of these would be to give considerably more than he could make of it for farming purposes and more than the market price less the costs of collection and marketing.

The landowners on the other hand contend that if the tithe were actually taken in kind it would be worth nothing to the tithe owner in the distant parts of the parish: that the farmer would be influenced by this consideration in the price he would give for it; that the value of the manure would not compensate for the cost of attendance upon stock and the interest of the money laid out in buildings, and that the market price of the small quantity which has been sold at Kendal is no criterion of what the value of the tithe hay would have been if it had been collected in kind and brought to Kendal market.

Blamire was able to confirm Atkinson's leaning towards the landowners' viewpoint by stating that the tithe commissioners went upon the expenses which would actually be incurred by the tithe owner in converting the tithe into a money equivalent, "with reference to the particular locality of the Neighbourhood as to climate and cost of labour".[21] Blamire expressed perfect confidence in Atkinson "as an able and clear headed man". Such was not the view taken by the College and its advisors; and, as so often in

[21] Blamire to Atkinson, 14 August 1838.

the Kendal case, their disagreement was a matter of some significance to the value of the tithe to be apportioned. When the College objected to Atkinson's valuation, and took the case to the Exchequer of Pleas in 1839-40, they argued that his method of valuation lessened the value of the meadowland by £500, and that the tithe of hay should be increased as a consequence by £50 from the £705 at which Atkinson had valued it. The College's witnesses, themselves assistant tithe commissioners drawn from all over England except Cumbria itself, stated that they would value the tithe by taking as tithe value an agreed fraction, usually 1/7, of the value of the land from which the hay was collected. This was the method which had increased the profits of many a living at enclosure; and it would certainly have produced a reasonably fair valuation at a lower cost in most smaller parishes when collection would have been a simple matter. The defence, relying exclusively on the evidence of local men, including Blamire himself, had no difficulty in showing that such a method would grossly underestimate the expenses of collection in a diffuse and mountainous parish like Kendal. In June 1840 Judgment was given entirely in favour of the landowners with respect to tithe of hay, and mostly in their favour with respect to the less valuable tithe of lambs. At a cost of some £400 the final obstacle to a definitive solution had been removed. Watson and Teal, whose acrimonious exchanges had spread as far as insults written within the sober pages of the commissioners' minute book, worked together again with Atkinson to produce the final apportionment in 1841.

The apportionment amply vindicated the College's belief that the living could be made immensely more valuable. The total tithe awarded amounted to £2,156. 11. 1¼. of which, according to the Act, the rectory

received 6/7ths (£1,848. 9. 6½.) and the vicarage 1/7th (£308. 1. 7¼.).[22] The value of the living had therefore been sextupled in the twenty years since the fight began in earnest. The Kendal landowners and tenants were faced with greatly increased tithe bills, their only consolation being that the sums they must now pay were fixed by statute and alterable only by the agreed procedure of a decennial valuation of grain prices. In their defeat they could at least reflect that there was no prospect of the tithe question rearing its head again. Those farming arable land near to Kendal itself were the hardest hit. Although only 12.86 per cent of the land valued was arable, it bore 57.99 per cent of the total tithe, at an average value of 3/4d. per acre. By contrast, the 63.51 per cent of pasture land bore only 7.43 per cent of the tithe at ½d. per acre. Corn tithe remained easily the most valuable, and it will be remembered that most arable land in the parish had been claimed by the landowners as exempt by virtue of small modus payments. The hay tithe was valued at 1/5d. per acre, in contrast to the sums of 4/-, 5/- and even 6/- bandied about by the College's witnesses at the trial in 1840. It remained only to count the monetary cost of procuring the apportionment. In a parish which proved so difficult to value, this was always likely to be high. In the event the costs amounted to a sum more than seven times in excess of the annual value of the tithes. The total cost of £15,311. 10. 3. was divided equally between tithe-owners and landowners.

III.

What general conclusions of significance emerge from a study of this tortuous affair? Three points seem to stand out. Firstly, the Kendal dispute indicates admirably the complexities and time-wasting irritations

[22] Westmorland Record Office, Kendal Tithe Apportionment, 1841.

which a tithe suit could entail. The original suit Lambert v. Fisher lasted for twelve years, but the expedients and development to which it led lasted for over seventeen before the tithe apportionment was signed. Because tithe law was overwhelmingly case law, and because each claim for tithes or modus defence had to be settled on its merits with the guidelines for the courts often confusing if not contradictory, it was hardly surprising that individual suits could drag on for years, sometimes leaving the tithe lawyers as the only beneficiaries. Cases such as those in Kendal, which could be set alongside similar experiences in Halifax, Manchester, Lancaster and Cheadle (Staffs.) among other places at the same time, punched home the simple truth that a system which had its origins in a primitive if not a barter economy had no place in a country which was experiencing rapid industrialisation and the application of scientific farming.[23] It was understandable that tithe owners should wish to cut themselves in on the fruits of improved agricultural productivity, but quite unacceptable that the law should permit them to re-impose long dormant claims to tithe in kind in order to establish their right to an increased income. The enclosure movement, out of which many tithe owners had emerged considerably richer by accepting desirable plots of land in lieu of tithe, had whetted the appetite for still greater gains. In Kendal, Trinity College was able to realise these gains, but only at the cost of the complete alienation of the farming community. When easy accommodations and traditional practices of tithing were broken by a new claim the entire system was called in question. It properly belonged to an earlier age, only surviving because its abuses were not so keenly felt

[23] The Tory radical Richard Oastler cut his teeth on the Halifax tithe dispute. See his *Vicarial Tithes, Halifax* (Halifax, 1827). For the dispute in St Mary's, Manchester, see W. R. Ward, *Religion and Society in England* (London, 1972), 111. A case study of the Cheadle dispute, in which Trinity College was also involved, is included in Evans, *op. cit.*, 147-177.

in the country at large before increased farming profits from the end of the eighteenth century in general lessened the value of tithes relative to agricultural income. It was the campaign to redress this balance, fought in equity and ecclesiastical courts up and down the country, which brought the issue to a head in the 1820s and 1830s. It was not difficult to show the pettiness, if not the total absurdity, of minor technicalities of tithe law being debated for years, with maximum opportunity for plaintiff or defendant to ask for delays, initiate cross-legislation, or simply shift his entire position by calling new evidence or making fresh claims. What was needed was a definitive statement of tithe law and procedure, preceded by much more expeditious ways of settling outstanding disputes. This, in essence, the 1836 Tithe Commutation Act was to provide.[24]

Secondly, and closely linked to the complexities of the law which cried out for remedy, was the matter of cost. The uncertainties of tithe law ensured that at least lawyers were guaranteed rich pickings. The Kendal tithe committee revealed that between 1824 and 1833, £3,700 had been spent in resisting the rector's claims. The members consoled themselves with the thought that at least this was better than giving in without a struggle, thereby accepting a tithe bill in excess of £2,000 every year. It was a considerable triumph for the committee in fact to be able to negotiate a conclusion which gave the College the value of only three years' arrears. It did make it worth their while to contest the action, at least in the short term. But such a contest could only be undertaken by wealthy parties. The cost of obtaining the 1834 Act was to be £1,500, and the landowners' share of the expenses of putting the Act into operation a further £7,650. With incidental expenses added, the total cost to the defend-

[24] 6 and 7 Wil. IV cap. 71.

ants of the dispute with the College was in the region of £11,000. Such large sums were needed to pay for legal opinion, court fees, witnesses' expenses to and from London and Preston, archival searches, parliamentary agents, surveyors, valuers and mappers. Tithe disputes in the early nineteenth century were meat and drink for many rising professional men with reputations to make. The Kendal committee was fortunate in that, although most of the questions in dispute were settled against them, the bulk of costs seem to have been borne equally by the respective parties. In all, these came to well over £20,000.

Such extraordinary sums tell us a good deal about the nature of tithe disputes in general. They were more often decided by the power of the purse than by strict legal niceties. In Kendal, the landowners could look to the support of many influential landowners, including the Lowthers, the most wealthy family in Cumbria. The endowments of Trinity College were many and lucrative. The result was that this contest could be waged on more or less equal terms. It was not always so. Many tithe cases were settled out of court simply because one party could not go on. A study of the material indicates that this could often be a vicar who did not have strong impropriate backing, or a tenant farmer ground down by legal machinery at the disposal of a wealthy impropriator. The vicar of Barlaston (Staffs.), William Oliver, provides an interesting example of this. By careful selection of small tenant farmers as the objects of attack, Oliver was able to establish new tithe rights against them. Having done this, however, he overreached himself by including in a subsequent suit a small tenant of the Duke of Sutherland. With the Duke's ample legal expertise and resources behind them, the defendants were able to institute new suits, prolong the case for five more years and finally re-establish the original

exemptions which Oliver seemed to have broken.[25] The ability to fight a tithe suit was clearly as much a matter of financial resources as legality of the claim. It was, of course, to correct any imbalance in resources between tithe owner and farmer that tithe bonds, associations or committees such as the Kendal tithe committee were established. Faced with communal resistance, a tithe owner would often be deterred from pressing ahead with claims he might have established quickly and cheaply against individuals. In addition, the mere threat of legal proceedings, itself often enough to obtain quick compliance from previously recalcitrant farmers, was less likely to meet with immediate success. Professor Best quotes Archbishop Secker's view that at the beginning of the eighteenth century the great majority of tithe cases were determined in the tithe owner's favour.[26] This, however, gives a somewhat misleading impression. It is much more interesting to ask how many cases never reached a final verdict, but were suspended at some point in the proceedings. If these were to be included in the computation, it would be found that the balance was very largely redressed. Cases were usually suspended either because one party saw no prospect of victory and decided to cut his losses by accommodation with his adversary or because cash was running low. Many tithe cases, as they dragged into their second decade, must have seemed like bottomless pits of expense for those fighting them. When the extent of the problem began to be made known in Parliament in the 1820s, it also helped to create a climate of opinion favourable to root and branch reform. Not only was the fact of excessive tithe litigation obnoxious, but in too many cases it appeared that, as one eighteenth-century parson put it, "*Might* shall overcome *Right*."[27]

[25] Evans, *op. cit.*, 139-146.
[26] Best, *op. cit.*, 99.
[27] Randall Darwall, Rector of Haughton, Staffs. Evans, *op. cit.*, 136.

The third point of general significance about the Kendal dispute, was that it took place at a very sensitive time. With the prospect of legislation being actively discussed, the Kendal case served to give point to many arguments in Parliament. William Blamire also saw to it that Members were kept well informed of the progress of the various suits through petitions and pointed references in debate. No one interested in the tithe question in Parliament can have been unaware of the Kendal dispute, the progress of which clearly indicated the need for remedial legislation. The solution adopted by the parties to the dispute was no less the subject of close scrutiny at Westminster. Members had often debated how best to reimburse tithe owners for the loss of their right to tithe in kind. Allotments of land had been the usual practice at enclosure. This had proved too generous. No one, remembering recent periods both of inflation and deflation, any longer considered a lump-sum satisfactory. The only viable alternative seemed to be a payment, varying with the prevailing price of the most valuable tithable produce — grain. This had been tried in certain private Corn Rent Acts in the 1820s in Lancashire,[28] but the Kendal Corn Rent Act of 1834 most closely resembled the solution eventually adopted. Many of the clauses were copied almost word for word into the 1836 Act. Indeed the only substantial differences, apart of course from the establishment of the requisite national machinery, were that the 1836 Act contained clauses embracing both voluntary and compulsory commutation, and that the fluctuating corn rent should be ascertained by reference to a moving seven-year average rather than a fixed ten-year one. The machinery for valuation, assessment and apportionment was substantially the same. Those who were to be instrumental in obtaining and putting into effect a

[28] Notably Lancaster in 1824, 5 Geo. IV cap. 28 and Cockerham in 1825, 6 Geo. IV cap. 22.

national commutation Act had clearly benefited from acquaintance with the Kendal solution.

It would not be too much to say that Kendal had, in a most vivid way, exposed the evil, and, eventually, suggested the solution. Experiences such as those in Kendal had done much to save parishes up and down the country from *ad hoc* and piecemeal solutions to their tithe problems. When it finally came about, the 1836 Act after some minor amendments worked remarkably well. Within fifteen years of its passage, tithe had ceased to be a live and acrimonious issue, and the question was, for the moment, considered as settled. How the ordeal of the parishioners of Kendal helped to bring this about perhaps deserves to be better known.