

**THE PRESENT STATE OF THE LAW OF  
TITHES, UNDER LORD TENTERDEN'S ACT,  
AND THE ACT FOR THE  
LIMITATION OF ACTIONS AND SUITS  
RELATING TO REAL PROPERTY. WITH  
REFERENCE TO TITHE COMMUTATIONS**

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**W. R. RIPLEY**

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BY W. R. RIPLEY,  
SOLICITOR.

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## P R E F A C E.

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THE wisdom and reasonableness of the suggestion made by the Heads of the Church, of a previous inquiry before any Statute of Limitations as applicable to the Church was attempted, is now fully apparent.

In the Appendix will be found the Report of the Real Property Commissioners, upon which Lord Tenterden's Act is supposed to be founded, their questions and the answers given thereto by the Archbishop of Canterbury, and by several of the Bishops; all the judicial opinions given upon the Act are there also collected. The Certificates and Reasons given by the Judges of the Court of Common Pleas in *Salkeld v. Johnson* are now there first published, that case not having yet been reported in the Common Pleas.

The number of cases dependent upon the construction of Lord Tenterden's Act is declared by the Report of the Tithe Commissioners in 1844 to amount to some hundreds and, indeed, to be indefinite. In their Report for 1845, they advert to the want of decision upon the disputed points arising out of that Act; and in their Report for 1846, they express their deep regret that the law under that Act remains as uncertain as ever. In that state it

had been suffered to remain since 1840; but it is submitted that the Reasons of the late Chief Justice Tindal, and of Cresswell, J., in support of their certificate in *Salkeld v. Johnson*, have done much to clear the way for a decision. The amount of Revenue of the Church, and more particularly of the Parochial Clergy, dependent upon the question in *Salkeld v. Johnson*, is very considerable, and should the Vice-Chancellor Wigram's decree be ultimately overruled, the means of usefulness of the Establishment, would be proportionally impaired.

7, Whitehall Place, October, 1846.

In *Ward v. Stephens*, 3 Price, 634, in the absence of Thompson, C. B., and Richards, B., Graham, Baron, in delivering his judgment and speaking of the maxim, *Nudum tempus occurrit Ecclesie*, observes, "That it is not only the acknowledged maxim now but when it was suggested, and was the consideration in the Legislature, with a view to shorten the time with respect to the clergy, and prescribe some limitation of time as applicable to them. I remember an admirable speech being made by Mr. Skinner, afterwards Lord Chief Baron, who impressed the House with the danger and impropriety of so doing; and the danger and impropriety of doing it would undoubtedly be extremely great, because if you were allowed to support a defence of composition real, by parol evidence of usage, so as to change it into a modus, it is perfectly clear that no man in his senses would ever plead a modus, because by pleading at once a composition real, according to my learned brother Wood, a defendant would have the advantage of non-usage, and he would then get rid of the question of rankness on all occasions. Not only so, but we should make every modus a composition real, and thus expunge the doctrine of moduses from the books. But it does more, because so many years have elapsed since the 13th Eliz.; we could not tell from a non-payment of 200 years whether the compositions were before or since the time of Elizabeth, and we should be giving validity to alienations of Church property, on the ground of prescription; for the period of the 13th Elizabeth will be just so far remote as to permit a defendant to set up compositions without those instruments which the law constantly requires to be given in evidence to support such a defence. You would presume it on a usage of 100 years; and in all the lesser possessions of the Church where poverty exists, and a frequent succession of incumbents takes place, these compositions would be set up on all occasions; therefore the distinction, I think, is wise and sound, and I shall never be induced to recede from that opinion which I have always held on these questions, and in which I am confirmed on the present occasion by the high authority of the Lord Chief Baron and my absent brother Richards."



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