EVIDENCE ON THE SUBJECT OF "CHURCH-RATES," BEFORE THE SELECT COMMITTEE OF THE HOUSE OF COMMONS ON THE 27TH OF 6TH MONTH, 1851

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THE SELECT COMMITTEE

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HOUSE OF COMMONS,

BY

JOHN HODGKIN,

ON THE 27TH OF 6TH MONTH, 1851.

REPRINTED FROM THE FIRST REPORT OF THAT COMMITTEE.

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About the middle of the 4th month last, information was received by the Committee of the Meeting for Sufferings appointed to attend to Bills in Parliament, that J. S. Trelawny, M.P. for Tavistock, had succeeded in carrying the following resolution in the House of Commons, *viz.*:—

"That a select Committee be appointed to consider the Law of Church-rates, and the difference of practice which exists in various parts of the country in the Assessment and Levy of such Rates; and to report their observations to this House;"

and that he was desirous of the co-operation of Friends in supplying such evidence as would promote the objects of the inquiry.

Four Friends were accordingly appointed to examine the cases of suffering returned during several preceding years. A considerable abstract was made from the accounts for the five years (1846—1850); and a selection was afterwards made of those cases which exhibited features of harshness and illegality. The Committee also considered that it might be desirable to supply personal evidence in some instances.

A circular was then issued requesting particular information from many of those Friends whose cases were ultimately selected, which was considerably responded to; and during the occurrence of the Yearly Meeting some important additional information was obtained.

The Committee of the House of Commons was occupied in the examination of witnesses, chiefly of other dissenting communities, during a considerable part of the 6th month; and on the 27th of that month our friend John Hodgkin attended, agreeably to the expressed wish of the Chairman, to give evidence on the legal division of the inquiry. His evidence occupies more than twenty-two pages (large octavo) of the published Report, and, besides consisting largely of information which bears upon the law of those called Church-rates, affords many particulars of the sufferings during the early period of our Society, chiefly on that branch of our testimony, and matters in connexion with it. Two volumes of our ancient records of sufferings which were produced, and one of the more recent volumes, were regarded with apparent interest by the Committee. A series of papers in illustration of portions of the evidence

was handed in and accepted. These papers are printed in the Appendix to the Report, and distinguished by the letters A. to F. Those marked B. C. D. specified :—

The number of cases, with amounts, respectively, of demand and of distraint throughout the kingdom, derived from the accounts of the past five years.

A schedule of similar kind, containing also the names and residence of Friends distrained upon during the past two years.

A selection, being the Abstract named above, showing cases of aggravated suffering, and, in some instances, of illegal procedure, which is preceded by an explanatory statement, signed by three Friends, on behalf of the Society, *viz.*, SAMUEL GURNEY, SAMUEL CASH, and SAMUEL STURGE.

By the time the examination had so far proceeded as to render the presentation of this paper suitable, the Committee began to be pressed for time. It would have been acceptable to the Friends who attended if an inspection of the paper had led to a more particular inquiry; but the Committee received it in common with the other papers, and appeared disposed implicitly to accept it.

The other papers were :—

"A schedule of imprisonment and persecution for non-attendance on the national worship and not 'communicating,' from about 1660 to 1680." Marked A.

"Case submitted to counsel on the legality of including more than one defaulter in a warrant of distress for the recovery of ecclesiastical demands, with the opinion of the Attorney-General and Sir James Scarlett thereon." Marked E.

And—The most recent of the petitions of Friends (17th of 5th mo. 1850) to the House of Commons for the abolition of those called Church-rates. Marked F.

Throughout the delivery of the evidence much respectful attention was given; and the other Friends present were impressed with the belief that the information which our friend John Hodgkin was enabled to afford found some place in the minds of the members of the Committee.

31*st of* 12*th mo.*, 1851.

Veneris, 27° die Junii, 1851.

MEMBERS PRESENT.

Mr. Trelawny	Mr. Hardcastle
Sir R. H. Inglis	Sir John Duckworth
Sir David Dundas	Mr. J. G. Smyth
Mr. Pole Carew	Mr. Littleton
Mr. Horsman	Mr. Heyworth
Sir Charles Douglas	

JOHN SALUSBURY TRELAWNY, Esq., IN THE CHAIR.

John Hodgkin called in, and Examined.

2920. *Chairman.*] I BELIEVE you were called to the Bar in 1825?—I was.

2921. Have you retired from practice?—Yes. I quitted actual practice in 1843.

2922. Have you had occasion at various times to make yourself acquainted with the existing law of church-rates?—Yes. The department of the profession with which I was most conversant was real property law; yet I have, ever since I commenced practice, had occasionally to give advice on questions of this kind and others connected with religious liberty.

2923. You have had more occasion to do so, probably, on account of your connexion with the community of Friends?—That is probably the case.

2924. Will you be kind enough to state to the Committee your view of the origin and history of church-rates?—In endeavouring to give my views on the subject, I do not at all propose to enter into many of the questions which have been so much discussed, in what for brevity I may describe as the Braintree case, as to the parochial liability and the power of a minority to bind the parish, but would as a lawyer freely admit the undoubted evidence which there is of the common law liability of the parishioners at large to the repair of the nave of the edifice for public worship, that of the chancel being thrown upon the rector or owner of the tithes.

2925. That distinction is clearly marked by the law of the land?—I think it is clearly so. In pretty carefully examining into the authorities, both of the general canon law and of the early English law, I confess that I have come to the conclusion (though I know that it has been a little disputed) stated by Chief Justice Holt in Carthew's Reports, p. 360, that in that point our law does very decidedly differ from that of most other Christian countries.

2926. Sir *D. Dundas.*] Will you state the difference?—According to the general canon law of Europe the repair of the entire building is thrown upon the owner, whether ecclesiastical or lay, of the tithes or other church endowments. I am aware of the interesting note (to which perhaps I may be allowed to refer) by the reporters of the Braintree case, in 12 Adolphus and Ellis, in which a very ingenious distinction is raised. After stating that, according to the original distribution of tithes, one-third of them was allotted to the repair of the building, one-third to purposes of hospitality, and one-third to the incumbent himself, they say that the chancel may be regarded as one-third of the building, and in Scotland is actually one-third of it. They therefore suggest that one-third of the incumbent's aggregate income for the whole of the building may be very similar to the appropriation of the whole income, if required, to one-third of the building. That is their line of argument; but it cannot, I apprehend, be sustained either in mathematics or law, and perhaps I need not pursue it further. We may very readily admit, without so refined a distinction, that the common law of England did impose the liability upon all the parishioners at large of repairing the building, without throwing any portion of it upon the owner of the tithes, with the exception of the chancel. I take that as a fact; and I may perhaps be allowed to refer, in connexion with it, to the laws of Cnut, as published by the Commissioners of Records, in which we find this very full but clear statement of the liability. It is the laws of Cnut, Secular, 66: "To church bot all men must lawfully give assistance;" so that I apprehend we have no occasion to seek for an earlier common law origin than that statute. But I am rather particularly anxious to refer to some of these early authorities, in consequence of the evidence which they furnish of the totally different state of the religion of the country at the time in which the liability arose.

2927. In your opinion, is "church bot" an adequate word to supply all the wants which the repair of the church implies?—I should be inclined to think it was, when we consider the sense in which "bot" has been used. "House bot" and "hay bot" were used when commoners had a right of cutting wood; "house bot" for all purposes of repair, and for the supply of fuel; "hay bot" for all purposes connected with the maintenance of hedges.

2928. Sir *R. H. Inglis.*] Are not the words, "*Ad refectionem ecclesiæ debet omnis populus, secundum rectum, subvenire*"?—I

believe those are the correct Latin expressions, but there is some slight difference between the literal translation of the Anglo-Saxon and the Latin version. It will be seen that I am not proposing at all to take a narrow, but rather a large interpretation, as imposing a common law liability. At the same time, I think it is but fair to refer to other parts of the same laws as the best expounders of the circumstances in which this provision existed at common law, and it seems to me that they do very clearly show the principle of the homogeneousness of all the people in the realm of England with regard to their common faith. I should like to have the opportunity of reading three or four of the laws from the same collection, which I think mark this distinctly. The eighth law in the first division (there are two divisions in the laws of Cnut) is, "And let God's dues be lawfully and willingly paid every year;" the ninth, "And Rome fee by St. Peter's mass, and whoever withholds it on that day, let him pay the penny to the bishop, and thirty pence thereto, and give to the king 120 shillings."

2929. Sir *D. Dundas.*] Is that the Peter's pence?—That I presume to be the Peter's pence. In the Latin translation I took out the words, thinking they were a little more explicit. "*Id est Romæ census quem beato Petro singulis annis reddendum ad laudem et gloriam Dei, regis nostra larga benignitas semper instituit.*" The 13th is, "And it is most proper that soul scot be always paid at the open grave." The 19th is, "And let every Christian man do as is needful to him. Let him strictly keep his Christianity, and also prepare himself to go to housel (mass) at least thrice in the year."

2930. Do you take soul scot to be the same thing as money paid *pro salute animæ*?—I am not quite clear of that.

2931. *Chairman.*] Do you cite all these facts or statements of law as proofs of the similarity and uniformity of religious belief at that period?—Exactly so; that emanating from the same authority, and extending over the same population, there are these provisions, which seem to me parts of the same homogeneous religious system. The 23rd, which is the last with which I will trouble the Committee, is, "And we instruct that every one shield himself very carefully against deep sins and diabolical deeds at every time, and that *he* very carefully make bot by counsel of his confessor," (which I think shows that I am right in ascribing the larger sense to the word "bot,") "who through impulse of the devil has fallen into sins." I think that the object for which I have cited these

contemporaneous parts of the same code, will be seen, without its being needful for me to offer any further remark upon them. They assume the homogeneousness of the religious faith of the people of England, a homogeneousness which no longer exists, and if it is to be maintained in its original character must be homogeneous popery. I would now proceed in the view of the common law liability to the statute of *Circumspecte Agatis*, in the 13th of Edward the First, which clearly withdrew from the temporal courts the power of prohibition in non-payment of church-rates; and as it seems to me, assuming the common law liability which I have mentioned, confirmed the jurisdiction of the Ecclesiastical Court over all the people of England for this purpose. The statute of *Circumspecte Agatis* is, "Circumspecte agatis de negotio tangente dominum Episcopum Norwicensem et Clerum non puniendo eos si placita tenuerint de hiis quæ mere sunt spiritualia videlicet de correctionibus quos Prelati faciunt pro mortali peccato videlicet fornicatione adulterio et hujusmodi pro quibus aliquando infligitur pena corporalis aliquando pecuniaria maxime si convictus sit de hiis liber homo. Item si Prelatus *pro cœmeterio non clauso Ecclesia discooperta vel non decenter ornata* in quibus casibus alia pena non potest infligi quam pecuniaria penam imponat."

2932. Sir *D. Dundas.*] Are there any persons of authority who hold that church-rates are not at common law?—I am not aware that there are now.

2933. In your opinion, are church-rates at common law?—I think the liability to maintain the building in a fit state of repair is a common law liability. I am aware that there is a little difficulty with reference to the absence of a thorough common law remedy for a common law liability, but I wish to put it as admitting the existence of the common law liability *ad refectionem Navis Ecclesiæ.*

2934. *Chairman.*] Am I to understand you to state that the common law liability, which is admitted on all hands, grew up at a time when there was almost an entire uniformity of religious belief?—Exactly so.

2935. But a new element has now been introduced which makes it, in your opinion, cease to be desirable that that common law liability should be maintained?—Cease to be desirable, and cease to be fair; and I think that the very circumstances out of which it grew have so entirely changed, that though Parliament alone can *alter the law*, yet the hypothesis upon which that common law