

Tithing Customs and Disputes: the Evidence of Glebe Terriers, 1698–1850

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"I certainly think that the institution of tithe, especially if rigorously enforced, is everywhere a great obstacle to the improvement and prosperity of any country. . . I believe too that it is as much for the real interest of the Church as for the land to adopt, if practicable, some other mode of provision."—William Pitt¹

"I am confident that I am defrauded by many of my parishioners of various vicarial dues and rights to which the laws of Heaven and earth entitle me. . . for the very word 'tithe' has ever been as unpleasing and odious, to farmers especially, as cuckoo to the married ear. Those who pay them, pay them very partially and I may say, grudgingly and of necessity."—Rev. William Jones, Vicar of Broxbourne and Hoddesdon, Herts.²

IN the last century and a half of its existence in its old form, the tithe system was at once uniquely unpopular and inefficient.³ Landowners and tenants alike had, of course, always objected to providing the tithe owner, whether a layman or a cleric, with a tenth of the produce of their land; but the developments of the eighteenth and early nineteenth centuries made the tithe owner's demands doubly onerous. Agricultural improvements bringing increased yields meant in their turn an increased return for the tithe owner, without the latter having had to bear any of the expenses of improvement. Thomas Thompson was one of many to voice the frustration of the agricultural interest when he asked: "Is it equitable that, whenever I work for myself, I should be compelled to work for another person also?"⁴ Adam Smith pointed out that the poorer lands were harder hit by the impost because of the higher capital outlay necessary to improve them,⁵ while the researches of Arthur Young and the Board of Agriculture were not slow to bring to light numerous cases of lands left barren because the burden of tithe, after heavy initial improvement expenditure, would not bring the improver any real return for his outlay. Typical of the comments of the Board of Agriculture Reports was this, from Stafford-

¹ William Pitt, Letter to the Duke of Rutland, 7 November 1786. Quoted in Earl Stanhope, *Life of William Pitt*, 1861, pp. 318–19.

² O. F. Christie (ed.), *The Diary of Rev. William Jones*, 26 January 1803, p. 147.

³ I wish to acknowledge my thanks to Dr David Robinson, Assistant Archivist, of the Lichfield Joint Record Office, for introducing to me much of the primary material on which this study has been based.

⁴ T. Thompson, *Tithes Indefensible*, 3rd edn, York, 1796, p. 50.

⁵ "Upon the rent of rich lands, the tythe may sometimes be a tax of no more than one fifth part or four shillings in the pound; whereas on that of poorer lands it may sometimes be a tax of one-half, or of ten shillings in the pound."—Adam Smith, *Wealth of Nations*, Everyman edn, II, pp. 318–19.

shire: "I have the most satisfactory proofs from the evidence of several respectable cultivators that the quantity of wheat sown is affected by the tithe system; they have assured me that they decline sowing wheat and choose to manage their land in a grazing system because they cannot bear the idea of paying the enormous rates that have been asked them by the titheman."¹

The arguments of the agricultural interest against tithes are fairly well known. Equally important, however, was the agitation by tithe payers against the lengthy and expensive lawsuits initiated by tithe owners to recover their rights in ecclesiastical, common law, or equity courts. Many saw victimization rather than justice as the motive of plaintiffs in such suits, and there can be no doubt that the costs, sometimes running into hundreds of pounds for a tithe claim of perhaps only a few shillings, could be ruinous. Summary jurisdiction before two justices of the peace for tithe claims not exceeding 40s. was provided in 1696, but this sum was not raised to £10 until 1813 and the opportunities for punitive action by tithe owners remained great, if their own resources could stand it.²

The tithe owners, of course, did not have it all their own way. Techniques of evasion had become quite sophisticated by this period and in their depositions in Court, many tithe owners stated either that they had taken legal action only as a last resort after years of prevarication or downright refusal to pay, or to combat the small customary payments or 'modus' which were offered instead of the full tithe, and which undermined their income.

It was obvious that the system was out of date and in great need of radical overhaul. The problem was frequently brought before Parliament throughout the period, and certain minor adjustments were made. Hemp and flax which were regarded as "beneficial to agriculture" were rendered liable to a money payment per acre rather than tithe in kind by an Act of 1696³ and madder was similarly regulated in 1757.⁴ The summary jurisdiction of the justices of the peace was an innovation, although strictly limited. Major amendments of tithe law were always defeated in the Lords, even if they succeeded in the Commons. Such was the fate of a bill to relieve Quakers from frequent prosecutions for their consciences' sake, introduced in 1736.⁵ Bills were also introduced in 1730 and 1772 to protect possessions against long dormant claims for tithe which were suddenly revived, for example, by a new incumbent, but both bills were withdrawn after government pressure.

Glebe terriers, which from the end of the seventeenth century record the customs observed at the parish level in the assessment and often the collection

¹ W. Pitt, *A General View of the Agriculture of the County of Stafford*, 2nd edn, 1813, p. 34.

² 7 & 8 Wil. III, c. 6; 53 Geo. III, c. 127.

³ 11 & 12 Wil. III, c. 16.

⁴ 31 Geo. II, c. 12.

⁵ For a detailed study of the Quaker campaign, see N. C. Hunt, *Two Early Political Associations*, 1961, c. VI *passim*.

of tithes, provide much useful information which adds to our understanding of how the tithe system worked, and why it was such a failure. Apart from Dr Barratt's important work on Warwickshire terriers,¹ little has yet been done towards an analysis of glebe terriers as a source of information about tithes, though they have been much used on pre-enclosure field systems and crop rotations. This study has been based on the glebe terriers of the 126 Staffordshire and 5 Warwickshire parishes whose terriers survive in the Lichfield Joint Record Office in sufficient numbers to be useful as a series.² It is hoped that it sheds light on the operation of the system in its final and controversial phase, leading to the Tithe Commutation Act of 1836, by which tithes were converted into variable corn rents.³

Glebe terriers were originally produced to enable an accurate record to be kept of the profits of a living. It was not until the Ecclesiastical Canons of 1604 were produced, however, that any explicit demand for details of profits from tithes was made,⁴ but in the diocese of Lichfield and Coventry, as elsewhere, this demand throughout the seventeenth century was met only in haphazard fashion. There are a few scattered references to 'portions of tithes' in the terriers, but predominantly they were concerned with glebe lands and the parsonage house. Professor Best has dated the "second phase of endeavour to draw up and safely preserve accurate terriers" after the efforts of Whitgift and Laud, from the early years of the eighteenth century.⁵ In Lichfield and Coventry the effort was made a few years earlier than this. William Lloyd, Bishop of Lichfield and Coventry from 1692-8, instituted the episcopal visitation of 1698 which required terriers to be returned containing detailed tithing customs. Some few parishes had been giving this information in the 1670's and 1680's, but it was not until the terriers of 1698 that the practice became general. As Dr Barratt has noted in her Warwickshire study, the terriers which were compiled on the occasion of an episcopal visitation and then returned to the bishop's registry were produced by the parish clergy and churchwardens, assisted by other 'substantial' or 'ancient' parishioners.⁶ In fact the Lichfield terriers were nearly always the work of the incumbent alone, who then signed it and called on his churchwardens to countersign, or put their marks to his work. The only exceptions to this seem to have been on occasions when an episcopal visitation coincided with the vacancy of a living, or when the incumbent was at odds with his parishioners and separate terriers were compiled

¹ D. M. Barratt (ed.), *Ecclesiastical Terriers of Warwickshire Parishes*, 1, Dugdale Society Publications, xxii. Dr Barratt has prefaced it with a most useful introduction.

² The class reference of these documents in the Lichfield Joint Record Office is B/V/6. A particular terrier may be located by this reference, plus the parish and date of compilation.

³ 6 & 7 Wil. IV, c. 71.

⁴ E. Cardwall, *Synodalia*, 1, 1842, no. LXXXVII, p. 296.

⁵ G. F. A. Best, *Temporal Pillars*, 1964, p. 100.

⁶ D. M. Barratt, *op. cit.*, Introduction, p. i.

by the contending parties. The terrier returned to the registry from Bushbury (Staffs.) in 1698 was in two parts. The first was in the form of an orthodox terrier, setting forth the various tithes, compositions, and moduses for tithes, ending: "Annual or yearly rates and Moduses for tith hay arising yearly in all the said Parish except Saltmore." This was signed by three churchwardens, but not by the vicar. Instead he added the acid rejoinder: "I do allow all the particulars above mentioned in this Parish to be true—except that last clause relating to the annual or yearly rates and Moduses for Tyth-hay arising yearly from the Parish which I bitterly deny." The question of tithe hay payments in Bushbury had in fact been the subject of bitter dispute since Thomas Hall was presented to the vicarage in 1693. Hall determined to put aside the small customary payments accepted by his predecessors, and alleged by the parishioners to be unalterable money payments or moduses, and to substitute either payment in kind or a more realistic composition. To this end, lengthy proceedings were instituted, first in the ecclesiastical court at Lichfield, and later in the court of the exchequer and at common law in the Stafford Assizes, which gave an equivocal award to the vicar.¹ The cost to the protagonists must have been enormous.

A terrier was returned from a parish to the diocesan registry on average once in every five years, though rather more frequently at the beginning of the period, when regular triennial visitations were held, than at the end. Each terrier usually begins by giving a long rehearsal of the situation and size of the parsonage house and glebe lands. There then follows a list of the tithes payable together with compositions and moduses accepted by the incumbent. The terrier closes by listing the surplice fees for weddings, burials, churchings, and the like, and sometimes indicates the customary payments due to the parish clerk. The parish of Tixall (Staffs.) affords a good example of prevalent tithing customs in its terrier of 1698: "The Tyths & offerings due to the Parsonage are as follows: Every House for the Garden and Smoake pays Two pence. When there are Seaven or ten Cows belonging to a family which hath had within one year seaven or ten Calves, one is due. Every Cow & Calfe under seaven or above that amount not to a tythe calfe pays one penny halfpenny. Every barren cow pays one penny. Every mare and colt pays two pence. When there belongs to any house Seaven sheep, one fleece is due. . . for every sheep that is under seaven & above ten that amounts not to a tyth fleece, for every such fleece is due a penny. If they winter there sheep till Candlemas & then sell them off Halfe Tythe is due as is for Cows above mentioned. If any one living out of the parish send sheep into this Parish to be winter'd, Halfe Tythe is due. The tythe lamb is due as the wool is, Except every odd lamb under seaven or above ten. . . one

¹ For details of the case see L.J.R.O., B/C/5, 1696-7; Public Record Office, E112/739 no. 53; E112/740 nos. 66 & 84; E134, 7 Wil. III, Mich. 17.

halfpenny. Geese are also tythed after the same manner. Tyth piggs are paid at Seaven or ten and so upward; as in other things above mentioned. Hemp & Flax is pd. every tenth bound, if taken green, And the eleventh if watered. Every Acre of Hemp or Flax sown four shillings, according to the Act of Parliament.¹ Tyth honey is paid at every seaven or ten Pints or Quarts. . . Eggs are paid for every Cock two Eggs, And for every Hen one Egg. Apples are tyth'd at Seaven or ten in number or measure. . .

"The whole Parish pays all manner of tyth in kind Except only the. . . Astons Demesnes, for which he pays ten pounds per Annum to the Rector. . . being a Rate Tyth for & in lieu of all due & Tyths arising from out of the said Demesne Lands. . ."

This terrier indicates very well how tithes were accounted, and although there are many local variations from parish to parish, it shows the type of payment which was made throughout Staffordshire and elsewhere. The system of 'half-tithing' for those keeping stock inside the parish and living outside it is perhaps a little unusual. More commonly the vicar was paid a sum of money for the sheep of 'forraigners' wintered in the parish, generally calculated per score. The custom of taking a tithe animal at seven instead of ten and making an allowance for the number wanting up to ten is practised in nearly every parish under study. It enabled the incumbent to get something like his full due from the small farmer keeping only limited stock. In some parishes the tithe could be reserved from year to year until the number reached seven or ten. The terrier of Pattingham (1698) explains how the tithe animal was often chosen: "The custom of tithing lambs is this, the owners first chuse two & then the Vicar takes his tithe & then the owner takes out seven more to make them ten & so on till all are tithed. If there be seven od ones. . . the Vicar has one ordinarily allowing 3d. a lamb for those which make up ten. But if there be six od ones or a lesser number, the Vicar takes either 3d. a lamb or reserves them for the increase of the Insuing year." Such customs were designed to prevent the vicar being given the least profitable animal of the seven or ten for his tithe.

The evidence of the terriers indicates that by the eighteenth century there were considerable divergences from what the ecclesiastical law books regarded as the usual division of tithes. It is not possible here to enter into minute detail concerning the definitions of Great and Small, Mixed, Predial, and Agistment tithes, but it must be noted that 'Great' and 'Small' tithes differed substantially.² Great tithes were accounted to be those of corn, hay, and wood, and

¹ 3 Wil. III & Mary, c. 3, 'An Act for the better Ascertaining the Tythes of Flax and Hemp'. By 11 & 12 Wil. III, c. 16 (1699) it was enacted that a payment of five shillings should be made to the tithe owner for every acre of land on which the crop was sown unless the land was already covered by a modus, or discharged from payment altogether.

² The best general expositions of tithe law in modern works are: J. A. Venn, *Foundations of Agricultural Economics*, 1923, ch. v, *passim*; and J. E. C. Hill, *Economic Problems of the Church*, 1956,

were in most situations by far the most valuable. Small tithes were the residue. The incumbent of a vicarage was entitled to take small tithes only, while if the living was a rectory, the rector or lay impropriator was entitled to take both great and small tithes. The great tithes of a vicarage would be owned either by a lay impropriator or by one of the dignitaries of the church. The chances were that the lay impropriator, especially if he had no other direct connections with the parish, would regard the collection of his tithes purely as a business transaction and would entrust the task to one of his stewards or agents.

The perpetual curacy was the third class of permanent living and its chief characteristic, as Professor Best reminds us, was "that its small . . . as well as its great . . . tithes were completely appropriated. . . and the incumbent was completely supported by a fixed money payment or 'pension' paid to him by the Impropriator."¹ Of the 131 parishes in this study there are 42 rectories, 34 vicarages, and 55 perpetual curacies, although it should be noted that 9 of these curacies were given rectorial or vicarial status in the ecclesiastical reorganization of the early nineteenth century.

Dr Barratt in her Warwickshire study has noted certain changes in the collection of tithes by the end of the seventeenth century.² The present study indicates a similar, or rather larger, divergence from what has been regarded as the norm. All the ancient treatises clearly classify hay as a great tithe, and thus to be collected by the rector or lay impropriator. However, of the 34 vicarages in this collection, 23 indicate definitely in their terriers that tithe hay, or a modus in lieu of tithe hay, is collected by the vicar. Some even formally classify hay as a small tithe. The Vicar of Mayfield in 1701 indicated that the profits of the vicar consisted of "The Tyth of Hay. . . and all other small Tythes and Surplice Fees."

Even tithe corn, the most jealously defended tithe, because it was by far the most valuable, was not exclusively collected by the great tithe owner. At Ilam, for example, in 1701 the Vicar was collecting "All maner of tyths as well as corne, hay woll lamb and allso all other small tyths and duties within the Lordship of Throwley being part of the parish of Ilam aforesaid." It is clear that the old rigid divisions between great and small tithes were beginning to mean less in many Staffordshire parishes by the beginning of the eighteenth century.

Many perpetual curacies, although not originally financed by tithes were considerably concerned in their collection by this period. The rector of Stoke-on-Trent had for a considerable time allowed the various curacies under his patronage the collection of great and small tithes for the use of the perpetual

chs. v & vi, *passim*. For a longer contemporary account see R. Burn, *Ecclesiastical Law*, London 1767, III, pp. 373-502.

¹ G. F. A. Best, *op. cit.* p. 17.

² D. M. Barratt, *op. cit.*, Introduction, pp. xxvi-xxix.

curate. The 1701 Burslem terrier states: "The Rector of Stoke-on-Trent and his predecessors. . . has. . . given and allowed unto the Curate of Burslem all the Tyths in kind of Corne, Grain, Hemp, Flax, Wooll Lamb, pigs and geese annually arising within the liberties of the said Township and Chappellry. . . together with the Easter Roll and Surplice Fees, as also the Modus paid in lieu of Tyth Hay."

Fourteen perpetual curacies in this study were supported by grants of tithe made by the impropriator. It may well be that this method of support was the more popular because the impropriator wished to avoid the trouble and expense of collecting what was often a variable revenue when he was obliged to make a payment to the curate anyway. The perpetual curate of Butterson noted in his terrier of 1698 that he received "the Tithes in kind. . . (of) Wool and Lamb due to the Curate at St. Barnabas Day. . . Tith hemp and flax at their season: Tith geese at Michaelmas: And tith eggs on Good Friday." There were, however, many impropriators who preferred to retain the more usual method of support, in making a fixed money payment deducted each year from the revenue of the tithes.

The terriers which included tithing customs for the first time in 1698 generally mentioned that the tithes due were payable in kind. The exceptions to this were the customary payments or moduses of two types. Firstly, the 'farm modus' of a certain sum, generally in multiples of a mark, payable in lieu of all tithes from certain lands, often the demesnes, as in the Aston demesnes in the Tixall example quoted above;¹ and secondly, moduses payable in lieu of certain types of tithe. The most common of these was the payment in lieu of tithe hay. Long before 1698 it had evidently become impracticable for the tithe owner to collect tithe hay in kind from the whole parish. The incumbent would only need a certain amount of hay for fodder for his own animals on the glebe lands, and found it more profitable to compound with his parishioners for a certain sum of money, rather than try to sell off large quantities of surplus hay. It was probably only for the direct needs of the incumbent that certain specifically named holdings might still have to render their hay tithes in kind. The 1698 Audley terrier indicates the usual practice: "There is one Meadow called Hall Meadowe belonginge to the tenement of Mr Haworth which onely payeth tyth hay in kind. . . every tenth cock in grass soe soon as itt may be cocked and counted is to have room made for the Vicar to carry itt out and make it in a convenient place—and for all the rest of the hay in the parish. . . all the parishoners & the said Mr Howarth for the residue of his hay are to pay for every day's mowing 1d., as well up land as all other sort of Meadowing—and to pay neither more nor less."

To ensure that each tenement paid the right amount of hay composition it

¹ *Ut supra*, p. 9.

was a common practice to make a list of the amounts payable from each and to insert it into the terrier, which could then provide a ready point of reference when the tenement changed hands, was split up or enlarged, or when payment was queried.¹

Customary payments were also noted in the terriers for personal tithes when these were claimed. The most important of these were the payments in lieu of the profits of corn mills. A strict tenth should have been payable on the profits of corn mills; but such profits, unlike the farmer's crops which stood in the field, were almost impossible to discover accurately. Often the only means of getting anything at all was to make a generous composition with the miller. Elford (Staffs.) which had three mills provides a useful example from its 1698 terrier: "The annual custom for the Tyth of Elford Mills is, for the Grist, 6s. 8d., for the water belonging to the Mill, 1s. od. For the Mill Holmes the tyth is due in kind but there has been sometimes Compositions, . . . 3s., 4s., sometimes 4s. 6d. or 5s. od. Comberford Corne Mill now turned into a Walke Mill pays yearly 5s. od."

It has been common to regard the imposition of personal tithes as virtually obsolete by the eighteenth century. It is true that only in a small number of parishes were personal tithes listed in the terrier. The Abbots Bromley terrier of 1714 noted: "Any person that hath any trade, science, calling payes for it 4d. per year." None the less, the Vicar of Uttoxeter in 1778, Athanesius Herring, considered it worth his while to institute a successful action in the ecclesiastical court against a parishioner, Robert Pretty, for non-payment of personal tithe, including 4d. for every inhabitant "using or Exercising Merchandize, Handycraft, Trade Art Faculty or Science. . . for using or Exercising the same in the name of a personal Tythe."² Payments either by or on behalf of servants were also required in some parishes, and it would probably be unwise to dismiss the prevalence of personal tithing too quickly.

Tithes were, however, essentially an agricultural impost and Christopher Hill has shown how easily payment was being evaded in sixteenth- and seventeenth-century London.³ With the growth of towns from the mid-eighteenth century it became almost impossible to keep a check on profits which should theoretically have been tithed. Agriculturalists frequently pointed to the unfair advantage that merchants and industrialists had in not having to pay any more than a nominal tithe, if that; and the terriers do not indicate that any real fight was put up in Staffordshire to maintain an income from tithes in the towns. A tithe on the profits of industry was simply not

¹ The Dilhorne terrier of 1735 provides a good example of this.

² L.J.R.O., B/C/5 1778: Herring v. Pretty. The incidence of the personal tithe is also noted in the Uttoxeter terriers from 1698.

³ J. E. C. Hill, *op. cit.*, c. v & XII *passim*.

practicable, and although at Wombourne, on the edge of what was to become the Black Country, a *modus* payment of 5s. 4d. was noted in lieu of the profits of a forge in 1732, this represented nothing like an economic equivalent. The vicar of Wednesbury in 1730, Edward Eginton, told a sad tale of the ruinous effect on his income of the workings of a coal mine in the parish: "N.B. There is a very great Coal mine in the Parish which is prejudicial to the Vicar by distroying a great deal of ground otherwise profitable to him: The most Learned in the Law allow that if Toythe is not due (which is a quere) yet satisfaction ought to be made from the Land Rendered useless. Mr Serjeant Hoo was of that opinion who was Lord of the Manor, Master of a Considerable part of the mine—yearley dureing his life gave two guineas towards damages as likeways did the Honourable Mr Ward, another of the Proprietors; and Mr Sparrow, the same who rented the mines; But now it's wholly falln into the hands of Quakers—ERGO."¹

The tithe owners were, however, rather more successful in the imposition of a full tithe on the new 'improving' crops, which were being introduced into Staffordshire from the early eighteenth century. As early as 1708 the Darlaston terrier noted: "Tythe plants, Turnips, and Carrotts paid as required." The Caverswall terrier included a new section in 1722 on root crops which came under the eye of the Vicar: "Tythe in kind of Potatoes, Parsnips Carriots, Turnips and all manner of roots."

The actual process of tithe collection could be fraught with difficulty. It was as important to follow the custom of the parish in setting out the tithe as it was to attend at the right time and in the correct fashion to collect it. Many defendants were hauled into Court for not setting out their tithes in order to allow a fair tenth to be collected,² while some tried in their own turn to sue the tithe owner for trespass if he did not collect his tithes in the correct fashion. The terriers of Blithfield from 1741 onwards go even further and give precise and minute details about the route which the rector's servants should take when touring the parish to collect their tithes, which argues for previous tussles and accusations of interference or trespass. Similarly the Caverswall terrier (1698) concludes: "It is lawfull for the Vicar. . . or his servants. . . to have free ingress, egress or regress into any house, cottage close, ground, etc. at all and every time or times of the year to visne take or carry away all manner of tythes due. . . with any manner of wain, oxen, cart, horses, or any other carriage whatsoever or to order. . . cast, dry and Tyth hay or grass in as free and ample manner as the owners or occupyers. . . can do for the residue with-

¹ From the Wednesbury terrier of 1730. See also J. F. Ede, *A History of Wednesbury*, 1962, pp. 187-8.

² See, for example, L.J.R.O., B/C/5 1711/2: *Backhouse v. Thomson* in Tamworth parish. This case turned on whether the impropiator had a right to demand his tithe corn in 'shuck'—properly covered—or whether he had to accept it only in bundles, in 'sheaf'.

out any let, suit, trouble, molestation, interruption or disturbance whatever."

Defenders of the clergy's right to tithes often argued that it was the greed of farmers which provoked tithe disputes and not vice versa. The difficulties facing a new incumbent could certainly be considerable. A correspondent to Cobbett's *Political Register* in 1808 argued: "It is almost universally true that when a new incumbent appears in a parish a combination of farmers is immediately formed to harass him into acceptance of their own terms."¹ These terriers lend a certain amount of strength to this argument. It is noticeable in certain parishes that when a new incumbent signs a terrier for the first time, the customs have changed—and generally to the farmers' advantage. The new rector of Kingsley in 1732, George Wenman, signed a terrier in which the old custom of tithing sheep at the sixth and making an allowance for each under ten was changed to one much more advantageous to the parishioners: "A half-penny for Every Lamb. . . but if we keep them after Lady Day and sell then out of the Parish any time before Midsummer, we pay one penny for every sheep." The style of this terrier, with its frequent reference to "we" rather than "the parishioners" suggests that it was drawn up by the parishioners and signed in innocence by the new incumbent. The parishioners would thus have some sort of documentary evidence to produce if in later years another rector should wish to question the custom.

Parishioners might also hope to benefit from a vacancy. The two churchwardens of Mucklestone and eighteen inhabitants all signed a terrier in 1747, during a vacancy, which included for the first time moduses of 4d. and 6d. for each day's mowing of hay within the townships of Gravenhunger and Aston respectively. This directly contradicted the terrier of 1698 signed by the Rector, Harry Broughton: "There are no known Prescriptions belonging to any particular Towns or parcells of Land within the . . . parish." Certainly, faced with situations like this, many incumbents would quickly try to get their own back, and many bitter disputes were founded on tithe owners trying to re-impose old customs, or parishioners attempting to give the force of law to temporary arrangements which were advantageous to them.

At the beginning of the eighteenth century a number of tithes were still taken in kind, strictly according to the customs prescribed in the parish terrier. A study of those tithe account books which survive indicates clearly, however, that individual compositions were being increasingly favoured. Such compositions would be especially valuable to vicars or rectors who were non-resident, and to whom regular payments in kind would be an encumbrance. Regular agreements might also be reached between larger owners or occupiers who possessed ready cash enough to discharge their lands. Rectors might also prefer regular payments in cash to hiring servants to collect in kind. In general,

¹ Cobbett, *Political Register*, XIII, 1808, pp. 341-5.

the terriers make no reference to individual compositions which could be revoked when circumstances changed. This codicil to the terrier of Biddulph in 1705 is exceptional, but revealing: "And it may not be improper to be noted that the inhabitants of the Parish of Biddulph have for several years last past entered into Composition and agreement with the Vicars of the said Parish to pay each his certain sum of money annually in lieu of all tythes and dues whatsoever including in Composition the Tythe of Wooll and Lamb, flax Hemp, Easter Offerings."

It was, of course, not necessary that the terriers should make reference to transitory compositions. These could be revoked on expiry, and payment in kind could be substituted if agreement could not again be reached. The case of the 'modus' was very different, and the terriers pay special attention to them, for the modus presented the greatest single obstacle to the full realization of an incumbent's income. Eminent judges and counsel defined moduses precisely. Sir Henry Gough's counsel in the Claverdon (Warwickshire) tithe dispute stated: "The essential characteristic of a modus, its being founded on a Composition real antecedent to the Statute of 13 Elizabeth, which is the foundation of every Modus subsisting in this kingdom."¹ Lord Hardwicke, then Lord Chief Justice, declared in the case of *Ekins v. Dormer*, 1747, that: "A Modus is nothing more than an ancient composition between a lord of a manor, and the owners of the land in a parish, and rector, which gains strength by time."² The case law of this period, though by no means clear, tended to support the view of Gough's counsel that if the defendant of a modus could prove continuous payment from 1570 or before then the modus was to be considered a valid ancient charge, and payment in kind could not be re-imposed. As the burden of proof was on the defendant of a modus, however, this could be extremely difficult, especially if no accurate accounts survived. It was not surprising that a large number of "pretended moduses" were in fact set aside when they were tried by courts of law. The problem, however, for the parish vicar wishing to break an ancient modus was, as the terriers often indicate, more complex than this. In the first place, if anyone in the parish claimed a modus it was most likely to be the lord of the manor, or those who occupied the demesne land under his protection. As the lord of the manor was quite often also the patron of the living, the incumbent was automatically placed in a weak position. Thus at Lapley although the terrier undergoes considerable alteration, including frequent questioning of a modus for hay, the following entry remains constant: "The demesne Land is exempt from paying Tyths. It pays forty shillings p. ann. to the Vicar." The lordship of the manor, and the patronage of the vicarage of Lapley was in the hands of the Biddulph family.

¹ H. Gwillim, *Collection of Acts and Records. . . Respecting Tithes*, 1801, III, p. 1294.

² F. Plowden, *The Principles and Law of Tithing*, 1806, p. 176.

No vicar could have hoped to break this *modus* which bore no relation at all to the titheable value of the *demesne*.

The other problem was that of litigation, which could extend over several years and was viciously expensive. The vicar with an annual income of less than about £200—the vast majority in the eighteenth century—could not consider legal action to secure his right without the aid of affluent friends. The most likely source of help would normally be the patron of the living, who would have a vested interest in making it as valuable as possible—unless, of course he himself sought to defend a *modus*. Clearly the link between lord of the manor, patron, and incumbent was quite strong enough to ensure that many certainly unfair and probably invalid *moduses* were maintained.

The economic inequitability of the *modus* was clear enough. As most of the *moduses* represented payments made as a rough equivalent to the tithe at the latest in the mid-sixteenth century, and generally earlier, such sums of money would clearly be derisory by the end of the seventeenth century—to say nothing of those which were still being defended in the 1820's.¹

It is not surprising, therefore, that when they felt strong enough, incumbents should attempt in the *terriers* to attack *moduses* which they hoped to break. The vicar of Rushall in 1698, George Hill, made an attack on two *moduses* in his parish: "Item, forty-eight shillings now paid yearly by Mr Thomas Leigh in Discharge of all vicariall Tythes arising from his lands . . . which he pretends to be his benevolence and noe right, but it is judged otherwise . . . Mrs Elizabeth Persehouse pays two shillings and sixpence yearely in Discharge of all Vicariall Tythes, pleading prescription for the same which it is hoped she cannot." John Fletcher, Vicar of Tutbury in 1722, extended the success of the impropiator of the great tithes, the Earl of Devonshire, and used it as a plea for the invalidity of the *modus* claimed for small tithes: "Rolleston Park of late years hath paid but six shillings per Annum, pretending it a *Modus*: but it was found nothing so . . . when William Earl of Devonshire, brought a special Verdict against John Powel, Esq., owner of the said Park for the great Tythe, and it was then made evident that the small ones did as rightly appertain to the Vicar. Hanbury Park pretends to have paid by way of a *Modus* only two shillings per annum. . . Stockley Park likewise. . . two shillings. We are informed there was an Old Vicar's Book in the Hands of the Earl of Devonshire which confounded the aforesaid pretended *Moduses*." In neither case do these *moduses* appear in subsequent *terriers* and it is likely that the vicars were able to substitute a more realistic payment. It is likely also that the success of the vicar of Tutbury was made possible only because of the previous action of the impropiator.

¹ Many of the depositions in the court of exchequer (P.R.O. Class E112) give information as to the value both of the tithe and of the *modus* claimed by the defendants. In some eighteenth-century cases, the *modus* barely represented a tithe of the tithe!

Fletcher may well not have had the resources to break the moduses of his own volition.

Because glebe terriers provided such useful evidence in law suits concerning tithe, incumbents became increasingly wary of changing the information provided in them. 'Custom' was of paramount importance, and a set of terriers which provided an unbroken set of customs governing the payment of tithe would carry more weight when presented in evidence. It is for this reason that in most Staffordshire parishes between about 1730 and 1755 the practice was adopted of copying out older terriers and returning them to the diocesan registry on the occasion of a visitation. By 1747 the registry clerks were marking each terrier which was returned to them: 'Copy of the terrier', in some cases incorrectly as there were changes from the previous terrier in some parishes. The Rector of Forton in 1755 described his terrier as "a true Copy (even as it is spelt)." The copies which were returned were generally of originals made between 1698 and 1732, and by the late eighteenth century they were being sent to Lichfield almost automatically on each visitation. However frustrating for the historian, the reasons for these copies were sound enough. Their evidence in disputes was second only in value to the endowments of vicarages, which had often been long since lost anyway. As Lord McDonald said in judgment at Warwick Assizes in 1794: "A terrier . . . is an instrument well known in the law. By the canons it is directed that an enquiry shall from time to time be made of the temporal rights of the clergyman . . . and returned to the registry of the bishop, the proper guardian of those rights. That return is called a terrier and has authenticity from being found in the proper place."¹ John Tomlinson, who bought the advowson of Stoke-on-Trent in 1817 and thereafter proceeded to revive most of the tithes which had fallen into obsolescence, clearly regarded the evidence of the terriers as vital for his campaign of reviving tithes by law suits. He and his brother wrote to the diocesan registrar, John Mott:

'Cliffville, 25 November 1830

'Dear Sir,

We send you on the other side a list of Terriers relating to Stoke Rectory of which we want copies in order to produce Evidence under a Common Suit of Chancery for Examination of witnesses in one of Mr Tomlinson's Tithe suits—and we should feel particularly obliged to you if you would allow the copies to be made *immediately*, as Mr F. W. Tomlinson will (be) in Lichfield all Saturday next. . . with a view to examine the Copies with the Original terriers in the Registry' . . .

We remain, Dear Sir,

Yours faithfully,

(signed) Jno. & F. W. Tomlinson.'²

¹ *Miller v. Forster*, Warwick Assizes 1794. Cited in Plowden, *op. cit.*, p. 328.

² Letter preserved with the Stoke-on-Trent terriers.

The Vicar of Walsall, John Darwall, in a letter to his proctor in the Ecclesiastical Court at Lichfield in 1783 said that he was only trying to recover from a local miller, James Gough, "a Modus for his Mill in lieu of the Tenth of the Toll, to which I'm expressly entitled by my terrier."¹ Inspection of the terrier, indeed, was one of the first tasks for contending parties in a tithe suit. The bill of costs for a Cheadle parishioner, defending a suit against the rector, John Chilton, in 1734 included a payment of 6s. 8d. "for the search of several Terriers of Cheadle being necessary to be looked into on the part of Hurst."² Similarly when in 1820 a tithe committee consisting of the leading inhabitants of Cheadle was set up to defend their non-payment of certain tithes against the rector, Delabere Pritchett, one of its earliest actions was to resolve to "examine all the Terriers and other documents in the Bishop's Registry at Lichfield relating to the Rectory of Cheadle."³

The legal importance of terriers is further indicated by the practice of signing the terrier. In its most usual form the terrier was signed by the incumbent and two churchwardens. In Walsall, however, the terrier is regularly signed not only by these but also by leading civic dignitaries, including the mayor. Elsewhere a large number of signatures on the terrier seems to be indicative of unrest in the parish. At Checkley in 1698 there is some doubt about the particular amounts to be paid by the inhabitants. The terrier is delicately framed to avoid giving offence and is signed by the rector, two churchwardens, two sidesmen, and seven other inhabitants: "But what are all the particular modi which the parishioners pretend to discharge their Ancient Meadows from tith hay we cannot relate, unless the ancient records at London, Lest we wrong the Rector or the Parishoners."

Conversely, terriers signed only by churchwardens and not by the incumbent could be regarded as valid evidence, provided that they were returned to the registry in the normal way.⁴ This being so, it is not surprising that incumbents should be loath to record compositions. A composition was not necessarily binding, but if the contract was incorporated in the terrier there was the danger that a new incumbent might be forced even in a court of law to retain the payment, as a modus, which because of the decreasing value of money, was no longer acceptable to him.

A similar attitude lies behind the frequent appeals to the 'custom of the parish', for when a terrier was lost or destroyed, the courts in the event of a

¹ L.J.R.O., B/C/5: 1785 (Add. Series). Darwall to Buckeridge 30 September 1783. See also the Walsall terriers. The 1698 terrier mentions a modus of 6s. 8d. in lieu of "the Lady of the Manor's Mill" but in 1751, the vicar was noticed as being entitled to a tenth of the toll from newly-erected mills.

² L.J.R.O., B/C/5: 1733-4: Chilton v. Hurst. Cheadle.

³ Stafford County Record Office, D239/M4405. Meeting of 12 Dec., 1820.

⁴ Decision given in Illingworth v. Mrs Leigh, Fillongley, Warwicks, 1800. Case cited in Plowden, *op. cit.*, pp. 319-20.

dispute would consider the evidence of the oldest inhabitants as to what the custom has been over a long period. Thus at Audley in 1698, the terrier begins: "The rate and manner of tything between the Vicar and Parishioners . . . hath been the use and custom . . . for a great number of years, as the parishioners affirm." When the terrier was lost or mislaid for any reason, similar evidence was relied on. The 1698 Dilhorne terrier stated: "The Easter Role being lost and embezzled in the late Civill Wars we have no guide or direction as to these things but what we have learned from ancient men, and the parishioners have confessed to."

Almost the only parish which seems to have had little regard for 'custom' in the submission of its terriers in the 1750's and 1760's was Haughton, Staffs., thanks entirely to the efforts of its remarkable rector from 1726 to 1777, Randall Darwall. His terriers give his viewpoint on the struggle to overthrow the easy-going ways of his predecessors and to institute a rigorous method of tithe assessment and collection.

Darwall's predecessor, William Royston, had been in the habit of returning short terriers giving little information, beyond the assertion that all tithes great and small were due and payable in kind, and that pigs, lambs, and calves were tithed at the seventh. Darwall's first terrier in 1732 was an attempt to clear up the confusion: "As to the small Tythes and Customary Dues of the Parish, there has been such Confusion and Irregularity for several years in the gathering of 'em that 'tis next to an Impossibility to ascertain the just right. Nor cou'd I obtain a Sight of my predecessor's Accounts, nor those of his Son. And the terriers likewise that have been formerly given up are vastly short and imperfect. . . Most of the Old people are dead; and those that remain are either really or pretendedly ignorant of the matter." Darwall also complained in this terrier that what the parishioners were claiming as a *modus* for tithe hay in part of St Giles' Meadow was in reality "An Imposition: and a temporary agreement only of Old Mr Royston, the late Rector." Darwall was never able to break this *modus*, about which he complained in each successive terrier. He wrote in the 1773 terrier that the occupier of the meadow had been promised extensive support if the *modus* should be questioned in court: "Mr Dale then pretended that his Landlord, Mr Crewe wou'd spend 2 or 3 hundred Pounds in support of the said *Modus*." Such support Darwall lacked. Indeed he had to fight to prevent the *modus* being extended. In 1755 he noted that another occupier was "fraudulently contriving to hook in all the Meadow Land belonging to Mr Crew into the same monstrous kind of a *Modus*; But such unfair purposes (I hope) will never be accomplished."

Darwall's campaign to restore what he called his "just rights" drew him into controversy with the lord of the manor, and an experienced lawyer and Master in Chancery, Francis Elde. The rector put forward a claim to tithe fish

from a pool called the Turn Pit, which was on Elde's land. The lawyer's power over the parishioners appears to have been considerably stronger than the rector's. The 1751 terrier states: "Since Mr Elde purchased the Woodhouse Estate and thereby (as it is asserted) became Lord of the Mannour, the said Tithe (of fish) has been arbitrarily with-held, and the People effectually prevented from declaring what they know of the Matter under this politic but false and groundless suggestion (instill'd into 'em by the said equitable Master in Chancery!) vizt. that if Tithe fish are due out of the Turn-Pit, they're equally out of all their Pits!"

The rector admitted that his attempt to increase his income by searching out his full dues had made him unpopular with his parishioners—an ever present danger in such cases. He wrote in the 1766 terrier that he had been "exposed to very unjust obloquy." But the dilemma must have been a real one, and one which could be multiplied throughout the country. For an incumbent with a social conscience but a poor income, the alternatives were either to be content with what the parishioners gave and not to be too zealous in enquiring after arrears or non-payments of tithe; or else to press every claim which, after all, were the claims of the church and not of an individual and would redound on the successor, who might otherwise be similarly defrauded. In the case of Darwall and many others, this latter course was attended with bitterness and acrimony throughout the parish, making the pastoral office of the incumbent virtually impossible. Moreover, in Darwall's case as he had not the resources to fight long legal battles he was doomed to disappointment. He wearily noted in 1755 that the wealthy and influential Elde "is determined (it seems) that *Might shall overcome Right.*"

The final insult was reported in the terrier of 1773 over Darwall's claim for tithe honey: "Tithe honey is indisputably due. And my predecessor's daughter in law gave me to understand that he had receiv'd every time any Bees were put down (though there were but few then in the Parish) a large Quantity of Honey in lieu of Tithe; and that her said Father in law oft purchased the Remainder, being fond of Methegalis. But instead of paying me, some unconscionable Neighbours lately stole the only Hive I had left & pilfered the Honey. A strange Requittal for uncommon forbearance." Of course, it may legitimately be doubted just how forbearing Darwall had been. Claims for tithe fish and tithe honey, which were the exception rather than the rule in Staffordshire, were hardly likely to lead to better relations between parson and parishioners; but one must none the less set against the common picture of the grasping parson caricatured by Cruickshank and many others,¹ the poor vicar trying to

¹ See, for example, Cruickshanks's 'Preachee and Floggee too!', attacking the clerical magistrate, in D. George, *English Political Caricature*, II, p. 182; and the anonymous frontispiece: 'The Parson returning from Tithing', in A. Tindal Hart, *Country Counting House*, 1962.

discharge his pastoral duties on an inadequate income, knowing that the effective execution of the former could depend to some extent on the continuance of the latter. Tithes in Staffordshire were not collected only by fat opulent rectors and the agents of large landowners who bought up impropriation after impropriation, although these may easily be found. There were many livings less well endowed than Darwell's Haughton,¹ and the many subterfuges to which landowners and occupiers would resort to avoid full payment of tithe could increase the hardship of certain vicarages which relied on tithes for the major part of their income.

There were, however, vicars of fairly modest means who were quite prepared to spend considerable time and money in building up a strong case against their parishioners with a view to subsequent litigation. Documents deposited with the glebe terriers of Alstonfield indicate the activity in this direction of the Rev. John Simpson, who was presented to the vicarage in 1822. From the outset he manifested his dissatisfaction with the revenue he received from the vicarage, and his attention soon turned, inevitably, to the large number of moduses claimed by the inhabitants. By 1829, he was writing to the Diocesan Registrar, who often advised incumbents on their tithe rights,² with a view to obtaining an authoritative legal opinion on his chances of breaking most of the moduses claimed.

A letter written by Simpson to the diocesan registrar, John Mott, on 14 July 1829, asks for advice and indicates that Simpson must have spent a considerable amount of time delving into the tithe history of the parish. He asks: "The several moduses for Hay: whether they are good or not. . . The 18 farm householders did each formerly pay 3s. 4d., but the farms have undergone perpetual alterations. . . No one can tell me which land or what quantity of land did formerly belong either to each of these farms separately; or to them all collectively. The three pounds hay money are supposed to be included in the Composition paid by some of the inhabitants of Warslow . . . but no one knows by which. . . What is to be done in this Case? Can the Modus be set aside? If not, where can I look for my three pounds?" Two further letters followed in quick succession, the last posing yet again the thorny problem of the tithe of mills: "P.S. In case a Miller refuses to render an Account of the profits of his Mill, how am I to act? I have sent him notice to exhibit his books, but he has taken no notice and is, I understand, determined not to account.

"Another miller so rendered his accounts as to cause it to appear that he has

¹ It is not easy to obtain an accurate estimate of the value of many eighteenth-century livings. The rector of Haughton in 1832 estimated his income at a comfortable £400, while complaining that the tithes could be improved.—Church Commissioners File, Millbank, NB20/187.

² See the Letter Books of John Mott, Diocesan Registrar, in L.J.R.O., B/A/19. Many of the letters are concerned with formal matters such as probate; but there are frequent entries which answer such questions as those posed by Simpson in this letter.

been and is a very considerable loser every year. . . He takes the whole of his trade to be abt. £70 per annum so that he is, according to this Acct., losing annually abt. £25."¹ It is hardly surprising that with profits so notoriously difficult to determine, most incumbents gave up the struggle and made a not too onerous composition with the mill proprietors in their parish.

Mott wrote three letters in reply which were generally optimistic about Simpson's chances of success,² and the entire case was in due course referred to the eminent ecclesiastical lawyer, Dr Stephen Lushington. He returned a closely argued 'opinion' which was again very much in Simpson's favour: "It appears to me that the Modus for the 18 farms cannot be sustained, first because . . . the precise extent and boundaries of the antient farm must be alleged and proved, which from this statement I conclude will be impossible, and . . . because the amount of payment has varied." Lushington concluded that "there is a fair prospect of success."

Legal caution must not be allowed to disguise the fact that Simpson had built for himself a very strong case. He did not, however, need to take it into open court. The enclosure of Alstonfield was being discussed and prepared very soon after this correspondence, and, armed with his own researches and with a favourable opinion from Lushington, the vicar was able to present a very strong case to the enclosure commissioners. Certainly, he did very well out of enclosure. In dealing with the vicar's claim, the Act of Enclosure of 1834 said: "And whereas the sum received by the said Vicar . . . for Tithes or Modus. . . has never exceeded in any One Year the Sum of One Hundred and Twenty Pounds, and Disputes have from Time to Time arisen as to the amount of Tithes, Moduses and Annual Payments due to the said Vicar, it is expedient that the same shall be settled."³ The settlement was very much to the vicar's advantage. He was given land to the yearly value of £300 exclusive of surplice fees. After a lengthy period of haggling the award was confirmed in June 1839, almost exactly five years after the passing of the Act, and Simpson was given 484 acres out of the total amount of 3,500 acres to be enclosed.⁴ Simpson's pressure had very nearly trebled the value of his living.

Disputes over tithe continued throughout the eighteenth century up to the Tithe Commutation Act of 1836. A very necessary clause in that Act was that which provided for an arbitrator to determine any suits then pending in courts

¹ Simpson to Mott, 23 September 1829. Letter with the terriers.

² L.J.R.O., B/A/19, Letter Book 'B', pp. 294, 442, 478. With regard to Simpson's claim to mill tithes, Mott said that he could obtain an account in a court of law and "it would be useless for the Owner to say that there was no Profit, if he admitted the fact of the Mill having been work'd at the periods pleaded." He admitted, however, that mill tithes were not common, and offered to write personally to the millers in question, urging them to pay, rather than risk legal action.

³ 4 & 5 Wil. IV, c. 15, s. 39. See also British Sessional Papers, House of Commons, 1836, XLIV, pp. 280-1.

⁴ P.R.O., I.R.18/9236, and S.R.O., Q/RDc 24.

of law "touching the right to any Tithes or . . . the Existence of any Modus or Composition Real or Prescriptive, or Customary Payment."¹

That such a situation still existed in 1836 is attributable to two main factors: the large number of moduses long since granted and the even larger number claimed, and the lack of any definite and irrefragable statute as to what was payable in a particular situation, and what was not. Tithe law was overwhelmingly case law, complex, confused, and contradictory in some cases. The overriding and always implicit principles remained that the 'custom of the parish' was the final arbiter of the right to take, and the mode of taking, tithes. In such a situation, which was very much like the promised land for the lawyer, the significance of glebe terriers is obvious. Quite often they provided the only documentary evidence which could be referred to by a court of law. On their testimony, together with that of the oldest inhabitants, and on the skill or craft of the lawyer, might depend the doubling or trebling of the income of impropriator, rector, or vicar. Many of them also give valuable insights into one of the most important aspects of village life, the relationship between the incumbent and his parishioners. Many disputes which did not reach the law courts, and which might otherwise be lost to the historian, are to be found, hinted at, or explained, in certain terriers. Others seem to have been drawn up almost with one eye on their subsequent usefulness as evidence in tithe suits. Their drawbacks as evidence have been noted above. Above all they do not give sufficient information about the vitally important lay impropriators, whose terriers were their estate accounts. However, terriers remain a primary source of information for a study of the tithe system in its final phase, which study itself can cast much light on one facet of the breakdown of the old village community.

¹ 6 & 7 Wil. IV, c. 71, s. 24.