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THE
R I G H T S
OF
Churches and Colleges
D E F E N D E D:
I N
A N S W E R

To a PAMPHLET, call'd,
An ENQUIRY into the Customary Estates
and Tenant Rights of those who hold Lands
of Church and other Foundations, by the Term
of Three Lives, and Twenty One Years, &c.
By *EVERARD FLEETWOOD*, Esq;
With REMARKS upon some other Pieces
upon the same SUBJECT.

By *DICAIOPHILUS CANTABRIGIENSIS.*

Quod tibi fieri non vis, alteri ne feceris.

L O N D O N:
Printed for J. SENEX, at the *Globe*, over-against
St. Dunstan's Church in Fleetstreet. 1731.

ADVERTISEMENT.

WHEN I first set about these Remarks upon the Enquiry, Proposals, &c. I did not know any body else was employed upon the same Subject with myself: Before I had got my Papers ready for the Press, there came out two Answers to the Enquiry; but upon reading them over, I found I had taken notice of some things which in them were omitted, and had treated of the whole Affair, in a manner so different from theirs, that I thought these Papers would not be unacceptable to the Public.

(I)



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THE Enquirer begins and ends with such Professions, of his Aversion to the common way, of striking at whole Orders of Men, for the sake of a few, of his Moderation, and Affection to the Clergy; that any body who only looks upon the first and last two or three Pages of his Book, would expect to find him, if not an Advocate for the just Rights of Ecclesiastics, at least a Writer of great Integrity and Impartiality. But whoever takes the pains to go through the whole Performance, will upon Examination, discover such Falsification in citing his Authorities, and Disingenuity in wresting the Sense of them,

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them, as is utterly inconsistent with common Honesty; and will meet with so many Insinuations and Invectives against the Order, that he will have good reason to believe this Mask of Friendship was put on, only to get an opportunity of wounding the deeper. I mention this only to prevent unwary Readers being imposed upon by fair and plausible Pretences; for in reality it signifies nothing at all to the matter in dispute, whether the Gentleman who has taken the Name of *Everard Fleetwood Esq;* has indeed the regard for the Clergy he pretends to have, or whether this Performance, as some say it does, owes its Birth to his being disoblged by a Clergyman of high Station in the Church; or whether he entered upon it by the advice of his good Friend and intimate Acquaintance, as he is said to be, the Author of the Rights of the Christian Church, and of Christianity as Old as the Creation: I am not at all concerned to enquire what were his Inducements to write; his Affections I have nothing to say to; his Reasons and Arguments, which he brings to support the Cause he has undertaken to defend, are what I purpose to consider, in the best manner his loose and immethodical way of Writing will give me leave to do.

But before I enter upon this Work, I think it proper to tell the Reader, that I have, for his ease rather than my own, chosen to reduce the Arguments of the Enquirer into the Method I have, to avoid those tedious Repetitions I must have run into if I had followed him Page by Page: Instead of this, which would have swelled these Papers to an unnecessary Size, I shall think it sufficient to answer but once for all every Argument he brings, how often soever he thinks fit to repeat it. Of this sort is the Plea from Custom, which the Enquirer is either so fond of, or so distrustful of its force, as to call it to his aid in five or six different places of his Book*:
this

* Pag. 31, &c. 40, 58, &c. 67, 69, &c.

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this in my opinion is wasting the Time, and abusing the Patience of the Reader; for if an Argument is good for any thing, it is enough to set it once in a proper Light; but if it be weak and inconclusive, you can never give it any force by repeating a hundred times over. However, since some People do not think a Book is answered except every Paragraph of it is considered, I shall all along set down the Pages from whence I have taken the Arguments of the Enquirer, that he or any body else may judge whether I have misrepresented him or done him justice.

In the Title-Page he calls Estates held by the Tenure of three Lives, or one and twenty Years, Customary Estates: this I believe is the first time they were ever called by that name. What Customary Messuages, Lands and Tenements held of a Lord of a Manor by Copy, are, we know very well, and why they are so called, viz. because they are granted and held according to the Custom of the Manor; but who ever heard before of Customary College or Church Leases, or of a Customary Fine for the Renewal of one of these Leases? However the Enquirer had a meaning, tho' not a very honest one, when he called these Estates Customary; and that was falsely to insinuate, that the Lessees of such Estates have by ancient Custom acquired a Right of Renewal: this is what he labours to prove in a great many places, with what success we shall see by and by.

That Custom has the force of Law*, shall readily be granted him, without putting him to the trouble of quoting *Bracton*, *Littleton*, &c. to prove it: but then it be is to be considered, of what kind of Custom this may truly said: it must be reasonable, immemorial, and uninterrupted, it must be certain and known, and it must be compulsory, not left to the liberty of every one to use it or not †, such as can never be proved with

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* Enq. pag. 30, 58.

† *Wood's Instit. Introd. & Auth. ib. citat.*

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with regard to the Affair now before us— That the usual Method has met with frequent Interruptions, by letting concurrent Leases when the Term was nearly run out, by changing Leases for Lives into Leases for Years, is too notorious to be denied; the Enquirer himself * complains of it: so that we have this Gentleman in the very same Book, complaining in one Place of that very Custom being altered and interrupted, which in another place he labours to prove has been always the same, and uninterrupted— The Custom here pretended, if there be any such, must be grounded upon fact, viz. That whenever a Life has expired in a Lease for Lives, or seven Years in a Lease for twenty one Years, the Tenants have constantly renewed, and that at a Customary Fine; but this is far from being true. As to College Leases I can speak with certainty, having formerly for some Years been Fellow of a College; and I am informed the Leases granted by Bishops, Deans and Chapters, Archdeacons, &c. are of the same nature, for which reason I shall comprize all these several kinds of Leases and Lessors under the general Name of Ecclesiastical, to avoid repeating at every turn Bishops, Deans and Chapters, Colleges, &c. Now the Leasehold Tenants to these several Corporations generally consult their own convenience, in the Business of renewing; and therefore they sometimes renew before seven Years are expired; sometimes let twelve or fifteen Years run out before they apply for a renewal; sometimes let two Lives drop, and that not only when one happens to expire suddenly after the other, in a Lease for Lives; and sometimes they let the whole Term of Lives or Years run quite out, and the Estate comes entirely into the hands and disposal of the Landlord; and some of these Estates can be traced up to the very time when the Lessors had the Fee of them, and first let them out upon Lease. Where then, amidst all this

* P. 53.

variety,

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variety, is the Custom sufficient to give Tenants a legal Right to demand a Renewal? If there be such a Custom as is here pretended, there needs no Act of Parliament to enforce and establish it; it is Law already, and may be pleaded in a Court of Judicature, as other general Customs may; such as these, that an eldest Son shall inherit; that a Man who marries a Woman possess'd of an Estate in Fee, &c. shall, if he has Issue by her, born alive, hold such Estate after the death of his Wife, by curtesy. These and such like Customs have obtained the Strength of the Law, and are properly called the common Law; and of such Customs as these, which have the Force of Law, the Judges are to determine whether there be such Customs or not, says Doctor and Student, *Dial. 1. c. 7.* a Book I the rather quote, because cited by the Enquirer as of great Authority. Now I believe all the Lessors would readily join issue with the Enquirer upon this point, and leave it to the Determination of the Right Honourable Bench of Judges, whether Lessees of College and Church-Lands have by Custom acquired a Right of renewal or not.

The next Argument of the Enquirer may be called *Argumentum à simili*; by which he endeavours to prove, that because Custom has prevailed in other Cases, it ought to prevail here in like manner. His first Instance is of what he calls Feudal Customs, Rights of Descent, Escheat, and different sorts of Tenures*. These Customs, the force of which I have just now spoken to, have no manner of similitude with the Case in hand, as any one will see, who reads over the Chapter of Doctor and Student, quoted here by the Enquirer, and considers the Customs there mentioned. For how does it follow, because Custom immemorial has establish'd, that the eldest Son shall

* P. 32.

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shall inherit; that the Husband shall hold by Curtesy during Life, &c. that therefore a Landlord should be obliged to grant a new Lease to his Tenant, when the old one is out, because this has long and often been practised before, for the conveniency of both? Where is the likeness of Reason? Custom prevails to fix Property, which otherwise would be uncertain †: But this is no reason why a Custom pretended only, but impossible to be proved, should induce the Legislature, where no such uncertainty can be alledged, to alter Property already fix'd and settled, and to transfer it from the Landlords, who can make out their Title to it by Deeds, Grants, and other legal Conveyances as firm and operative as any Man can shew to support his Claim to his Freehold, into the hands of their Tenants, who have no manner of pretence of Right or Title whatsoever, but according to the Conditions, and during the Term mentioned in their respective Leases.

But Fiefs, he says, or Lands of Inheritance, which were originally precarious, are grown Hereditary by Custom*. This may in some measure be true, and yet there is a wide difference between them and Leasehold Estates: Fiefs were originally held of the Crown, were granted upon Conditions which sometimes by express Concession, sometimes by tacit Consent of the Grantor, grew obsolete. They were sometimes held by Tenures of base or burthensome Service, which as the Liberty of the Subject gained ground, grew out of date; many of those Tenures were abolished by Statute ‡, but then the Lord had an equivalent given him: Whereas Leases are written Covenants enter'd into by both Parties, the Conditions of which

† The Design of the Law concerning Prescription, was, that the State should not be disturbed by uncertain Titles, and by Properties in constant doubt and suspense. Puffendorf, l. 4. c. 12.

* P. 33.

‡ 12 Car. II. c. 24.

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which Covenants they are both bound *bona fide* to fulfil, and to nothing more are they bound.

His next Argument is from what Custom has done for Copyholders, *viz.* that it has enfranchis'd their Persons, and ascertained their Fines, which before were at the will of the Lord*. As to their Persons, there is no manner of similitude between Copyholders and Leaseholders; Copyholds were formerly held by base Services, which the Law, a Friend to Liberty, has now abolished, the Lessees we are concerned with, never held by any such Tenures of Servitude; so that Liberty is here entirely out of the question. As to their Property, the Law has indeed restrained arbitrary Fines for Copyholds, within two Years Value. For what reason this was done, I am not able to say, but desire it may be observed, that with regard to Copyholds, Lay-Landlords are restrained in the same manner with Ecclesiastical ones; as in all Equity, there ought to be the same Law for both, with regard to Property. And I will venture to promise, that if the Legislature shall ever think proper to make a general Law to ascertain the Fines and Conditions of Leases, Ecclesiastical Landlords will not desire to be excepted from it, but will be very willing to have their Rights put upon the same foot with those of their Fellow-Subjects.

There are many other Differences between Copyhold and Leasehold Estates; Leases are conveyed by Indenture, Copyholds by Copy of Court-Roll; neither Lessors nor Lessees can be obliged to renew; in Copyholds both Landlord and Tenant may be compelled. As to his Assertion that both are of equal Antiquity †, I cannot allow it to be true; because Copyholds are all of them confessedly immemorial, whereas the first Grantors of Ecclesiastical Leases can in many Cases be pointed out. But if they were of equal Antiquity, it is plain the Law never consider'd

* P. 34.

† P. 36. 39.

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der'd them both in the same View. Several Differences I have already mentioned, and there is one very remarkable one still behind, and that is this; before the disabling Statute, Ecclesiastical Corporations had, with proper concurrence, a Power to alienate; and as the Law now stands, any Person or Corporation possess'd of an Estate in Fee, may, if they please, let any Lease of it, for Lives or Years, not exceeding three Lives or twenty-one Years; but no Person or Corporation can at this time create a Copyhold, or alter the Customs thereof*.

Leaseholders, he † tells us, are more numerous than Copyholders, therefore it is reasonable the Legislature should interpose in their favour: But to do what for them? not to rescue them out of Servitude into Liberty; this they do not want. What then? Why truly to make them Owners where they are only Tenants, and contrary to all Reason and Equity, to despoil the Landlords of their just Rights, and give them in lieu thereof, only a Rent-Charge out of their own Estates, in order to secure to the Lessees, their Tenants, Emoluments and Advantages they never purchased nor covenanted for.

If this be the case, as it undoubtedly is, the greatness of their number is so far from being a good Reason why the Legislature should interpose in behalf of Leaseholders to ascertain their Fines, that this Consideration throws weight into the contrary Scale: Since the more numerous they are, the greater and more extensive will the Injustice be, which is done by such Interposition.

But the ‡ Enquirer has the assurance to tell us, Leaseholders have purchased this renewable Right: If they have, no doubt they have something to shew for it, whereby such Right is conveyed to them. Now to satisfy every Tenant of a College or Church Lease, what he has really purchased, he need only read over his Lease;

* Wood Inst. l. 2. c. 1. §. 10. † P. 63. ‡ P. 40. 65.

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Lease; and there I will venture to assure him he will not find one word of this renewable Right, so much contended for: This I would desire every Lessee concerned to take notice of, because most People that purchase Church or College Leases, are apt to think themselves to have more Property in them than they really have. A Man has paid a Sum of Money for a Lease of this sort, or it has perhaps been some time in his Family; he lets it to an Under-Tenant who calls him Landlord, and pays him Rent; this makes him fancy himself the Owner of such an Estate, liable to certain Incumbrances of reserved Rent every Year, and Fines upon renewal: But let him but look over his Lease, and he will soon be convinced that he is only Tenant for such a Term of Lives or Years, and that under such Conditions as are express'd; so that if this Term expires without a renewal, which his Landlord is perfectly at liberty to grant or refuse, all his, the Lessee's Title to that Estate is utterly extinct, and at an end. This by the way gives me an opportunity to make some Remarks upon the Draught of a Bill lately handed about, for ascertaining the Terms, and regulating the Fines for Leases under Ecclesiastical Persons. The Preamble to the Bill runs thus: Whereas the Tenants and Owners of Lands, Tenements, &c. holden by Lease under Bishops, &c. have by ancient Custom been admitted to renew, &c. Here the Preamble contradicts itself as well as Truth in the very first Line, by calling the same Persons Owners and Tenants. Tenants indeed they are, and that according to the Conditions of their Leases, and no otherwise, which is very different from being Owners †, a word foisted in purely to serve a turn, and insinuate their having a

† The Law calls the Lessors Owners, 26 H. 8. c. 17. I believe no body can show me where the Tenants were ever called so before.

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right which they never covenanted for, and which the Lessor never pretended to convey to them.

The case in short is plainly this; a Person seized in fee of an Estate, settles it upon a Corporation ecclesiastic or collegiate, for the promoting of Learning, Piety and Charity. The Corporation by virtue of the Grant of their Benefactor, stand possess'd of the Estate in the same right the Donor had, as to holding and enjoying the same, the power of alienating or committing waste only excepted. The remoteness of the Estate, or other reasons, may make it inconvenient for them to let it at rack-rent, as they have undoubtedly a right to do; and they chuse rather to let a Lease of it for Lives or Years, under certain Conditions, such as these, not to alienate without leave, not to commit waste, to bring a Terrar of the Premises, &c. The Lessee is here, upon the same footing with other Lessees, and has no more right conveyed to him than they have, which is only to *have and to hold* the Land demised to him during the term express'd in his Lease; nor does it make any essential difference between Leases, that some are granted for three or seven, others for ten or twenty-one Years, they all inure and operate in the same manner, and are looked upon as of the same nature in the eye of the Law. As to Leases for one, two, or three Lives, they give no different kind of right or claim to the Estate leased; but the only real Difference is with regard to the term, during which the right to hold the Lands subsists, and is vested in the Lessee. The right granted is certainly no more than is covenanted for; and if we hearken to the Author of Doctor and Student, he will tell us that "*by the Law of Reason, Covenants are to be fulfilled* * , and that "*it standeth not with Law nor Reason that the Donee should have a more perfect or sure Estate than was* "
" given

* Doctor and Student, Dial. 1. c. 5.

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" *given him* † ."—It is indeed usual, (not customary in the legal Sense of the Word, for Custom is compulsory *, but here both Parties are at liberty;) it is usual, I say, for the Tenant at the end of seven Years, or when one Life is expired, to apply to the Landlord for a renewal, though this Application is sometimes before seven Years or one Life expired: This is often the case when the Tenant has a mind to alienate; for Purchasers often desire to enter at the beginning of twenty-one Years, often like to change the Lives, or at least some of them. At other times, as I have said already, Tenants defer renewing longer than the expiration of seven Years, or one Life. When a renewal is desired, if both Parties agree, the old Lease is cancel'd, and a new one granted: This new Lease is an Indenture, the obligation whereof begins at the time therein specified, no mention is made of what was before transacted, of former Leases or of ancient Custom; and this I think is another considerable difference between Leases and Copyholds.

The Enquirer says, if this be the case ‡, Leaseholders will have acquired nothing by Custom: I answer, no more they have, nor is it reasonable they should acquire any such Right as is contended for, since no such Custom can be shewn as is sufficient to give them such right, as I think I have abundantly proved.

His next Argument is ||, that if Leaseholders have not a renewable Right, they are in a worse Condition than Copyholders: This I think is as odd a way of reasoning as ever I met with, to say any Man or number of Men have a Right to a thing, because otherwise they will not be in so good a Condition as some of their Neighbours: This is a Foundation of Right, Grotius and Puffendorf have been so ignorant as not to know, or so careless as to omit. The honour

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† Doctor and Student, Dial. 1. c. 34. * Wood Introd. ubi supra. ‡ P. 63. || P. 63.

nour of this discovery belongs entirely to the Enquirer, whom I shall not attempt to disturb in the possession of it, *habeat fecum seruetque sepulchro.*

Another likeness found by the * Enquirer between Leaseholders and Copyholders, is, that in pleading or making Titles, both Copyhold and Leasehold Titles are alledged as Grants, and have divers other properties in common: I answer, this similitude in some circumstances is no proof they are or ought to be alike in others. An Advowson or an Estate in Fee-simple may be conveyed by Deed of Gift, and the Title to it pleaded as a Grant, and yet no body ever thought this a reason why either of these should be looked upon in the same view as a Copyhold. The Enquirer tells us, p. 43. that *in Capite* Lands, holden of some Sees, while that Tenure continued, the admission of an heir, or licence to alienate upon Tender of a reasonable Fine, could not have been refused; but how is this proved? Why truly from a *Latin* quotation, which proves the direct contrary, and sets forth, that the Bishop of *Durham* granted such a licence, not because it could not be refused, as the Enquirer suggests, but *out of his special favour*, and *in consideration of a Fine* †. Whether the Enquirer designed here to give us a specimen of his skill, or his fidelity in translating out of *Latin*, I leave to the judgment of those who are better acquainted with his integrity and ability than I am.

His next proof of the reasonableness of tying down Ecclesiastical Lessors to certain Fines by Custom, is, because Custom has prevailed to settle Modus's and Exemptions: He begins thus, p. 41. " *In the case of Tythes, it is well known to be a received Doctrine of the Church, an express Ground and Rule in the Canon Law, that Jure divino, the tenth without any abatement whatsoever is due from our Estates, and* " no

* P. 65. † *Sciatis quod de gratia nostra specialiter et per finem decem librarum concessimus et licentiam damus, &c.*

" *no doubt the Inference would be good if the Antecedent could be proved.*" These Words I read over several times with a sincere endeavour to make sense of them; but I now utterly despair of it, except the Writer of them would be so good as to tell me how to find which is the *Antecedent*, and which the *Inference*, or in other words, how to make head or tail of them: If he had brought two Propositions, one depending upon the other, I fancy I could easily have distinguished the antecedent from the inference deducible from it; but when he talks of antecedent and inference in such a single Proposition as this, Tythes are due *jure divino*; I am informed of nothing but the ignorance of the Man who can write in such a manner as this.

But let him go on, and in the next † Page we have this Argument in its full force, *viz.* If Custom has prevailed against *Jure divino* Rights, or those commonly esteemed so, of Tythes; *a fortiori*, it may be allowed to bind Ecclesiastical Lessors to a renewal, upon the payment of accustomed Duties and Fines.

In answer to this, I must observe, that Modus's were originally introduced by *the consent of the Persons interested*, who accepted of them as *an equivalent* in lieu of Tythes, to which they were then equal in value, or made so by some other donation of the Person who paid the Modus. This the Law, a Friend to quiet possession, where no Claims to the contrary appear, supposes to be the case of all Modus's that are immemorial, and therefore establishes them all, though some of them may have grown by other means, as the indolence or corruption of those concern'd, &c. But how does this make it reasonable, to take away part of the undoubted Rights of the Clergy, *against their consent*, and *without giving them any manner of equivalent,*

† P. 42.

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equivalent, and to give them to those who can plead *no such immemorial Custom*, as in the case of Modus's? As for exemptions, it is not Custom, as the Enquirer asserts, but Statute which has fixed them; as any body may see that will look into 31 H. 8. c. 13. & 2 & 3 E. 6. c. 13.

In this place, the reasoning of the Enquirer stands thus: If the force of Custom has in some Articles lessened the temporal Possessions of the Church, they ought to be lessened in other Articles, where no such Custom can be shewn.

It does not require any great capacity or attention in the reader to discover how well his Antecedent and Inference are here connected; I shall therefore proceed to the next Argument of the * Enquirer, which is, if Fines are claimed by Custom, Custom ought to regulate the Fine: I answer, that the first of these Assertions is false and groundless; no Ecclesiastical Lessor ever claimed a Fine as due by custom, but it is due by agreement or covenant, in order to a renewal, and is sometimes mentioned as the Condition or valuable Consideration upon which a Lease is granted.

The other Arguments of the Enquirer, may for the sake of method be reduced to two heads, *viz.* such as are taken from considering the Circumstances of the Lessors, or those of the Lessees: Of the first sort are such as these, that the Clergy should not be attentive to the Methods of growing rich †, that some of their own Order have censured it as a mis-application of the Revenues of the Church, to enrich their Families therewith ††; that it will scandalize inquisitive Men, make Dissenters contract greater prejudice to the Church ‡; that setting large Fines will lose the Affections of the Laity ††; whereas small ones will secure their love and esteem. Here instead

* P. 72.
†† P. 89.

† P. 88, 89.

‡ P. 11.

‡ P. 89.

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instead of shewing what are the just Rights of Ecclesiastics, the Enquirer takes upon him to instruct them in their duty; they are not to be avaricious or too much attached to the World. Why, no more should any other Man be, that pretends to be a Christian; and yet this is no reason why either Clergy or Laity may not claim their just Rights; why they may not buy or sell, lett or lease their Estates as other People do at the Market-price; nor will inquisitive Men, who are unprejudiced, think the worse of them for it.

As for the Affections of the Laity, there are a great many Gentlemen and others, who esteem the Clergy, for their *work's sake*: To purchase their good opinion, the Clergy need not part with any of those Rights they are by Law possess'd of; many of these, though their Interest may lie the other way, as well as that of their Neighbours, declare openly against the unjust Projects lately set on foot, to invade the Rights of the Church, if the * Enquirer will allow me to use that thread-bare Expression: many of them not only cheerfully pay their Rents, Fines, and Dues, to the superior Clergy, as they are by Law and Justice obliged, but generously contribute to the increasing the maintenance of the poorer sort, by augmentations of small Livings and voluntary Contributions, &c. But there are others who are not contented with their own Possessions, how large soever they happen to be, or who would be glad to see the whole Order abolished; that are perpetually exclaiming at the Avarice and Extortion of the Clergy: nothing less than reducing the Clergy to a servile and beggarly Dependance will content such: And this I think would be purchasing their Affections somewhat too dear, if at last it would ever purchase them.

Nolo ut tibi placeam perire.

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* P. 25.

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But before this Gentleman sets up for a teacher of the superior Clergy, I wish he had given us some reason to have a better opinion of his notions of religious Matters, than this Book of his will induce us to have. According to him the Foundation of the Church is laid *only* * upon the Scheme and Principles of universal Charity and Beneficence; for in this he tells us is comprehended the whole of the cause of Virtue, and what is beneficial to Mankind. Now I can tell him another thing the Church was founded for besides, which some People, as wise as the Enquirer, think of great consequence and very beneficial to Mankind; and that is the Worship and Service of Almighty God, explaining and enforcing his Word, and administering his Sacraments. And because he shall not take my Word for this, I will shew it him out of some Books, which if he is of the long Robe, as is generally supposed, he ought to have understood better, or represented more faithfully than he has done. The 3d of *Rich. 2. c. 3.* says, *Lands were given to Holy Church to serve and honour God diligently, to keep Hospitality, and to teach the People, and to do other worthy acts pertaining to the cure of Souls:* And by 34 *E. 1. c. 1. de provisoribus*, and 25 *E. 3.* it is declared that the Church of England is founded in Prelacy by the Kings of England, Earls, Barons, and other Nobles of the Realm, to inform them and the People in the Law of God, and to make Hospitalities, Alms, and other Works of Charity. This last Clause is cited by the Enquirer himself †, which makes it the more strange that he could after reading it, take so much pains as he does, to make People believe Bishops, Deans, and Chapters were designed by their Foundations, for nothing more, than like Masters of Hospitals or Almoners to distribute the Alms of their Founders ‡.

To make this notion of his the more plausible, the Enquirer tells us, that common Law made no other Provision

* P. 13. † P. 14. ‡ P. 16.

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Provision for the Poor, before † 5 *Eliz.* and since that*, they are almost entirely thrown upon the Laity. This last Assertion every body must know to be a direct Falshood, who considers that the Clergy pay to Poor-Rates in proportion to their Income, as well as the Laity, nor do I believe there is any just ground of complaint, that the Clergy are not ready to contribute according to their power, towards voluntary Works of Charity, such as Work-Houses, Charity-Schools, &c. as well as their Neighbours.

He tells us †, the Laity were originally Patrons of the Clergy; that the Donors of Benefactions to the Church, had a regard to the Tenants, and designed them a beneficial Tenure ‖. The first of these Assertions he owns is not universally true, because Clergymen have sometimes been considerable Benefactors; however, he thinks it comes all to the same, because they only gave what they had before received of the Bounty of the Laity. But I would ask him, if it has not sometimes happened that Clergymen have been Benefactors out of their own paternal Estates? But supposing all Benefactions had come from the Laity, how does that affect the Right of those to whom they were given? How can the Possessions of the Church being given to it by some of the Laity long since dead, be a reason why, contrary to the intent of such Donation, any part of those Possessions should be taken away from the proper Donees, and given to other of the Laity who have no relation at all to the first Donors, and for whose advantage there is no ground to suppose, they had any view or consideration? Why the Enquirer says they gave with a view that the Tenants should have a beneficial Tenure. This is an assertion, the truth of which he will never be able to make appear, I believe, from any Donation whatsoever. What were the ends of such Donations, has been

‡ P. 15. * P. 91, 92. † P. 7, 13. ‖ P. 27.

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already shewed, as to Corporations strictly Ecclesiastical; as for Colleges in the two Universities, the design of their Institution was to promote the Study of Religion, Learning, and Virtue, as is frequently mentioned by the Founders in the Preambles to their Statutes: But in none of these is any mention made of the Tenants, as if any such benefit was ever designed to them, as is here pretended. Sometimes indeed the Donors have out of such Benefactions provided for some of their own Family, as in the Case of Sir F. White, 18 Eliz. c. 11. and the Statutes of Schools and Colleges have sometimes Clauses in favour of the Kindred of the Founders; and where any such Kindred appear, I never heard any complaint of their Claims being overlook'd.

The Enquirer's Arguments, taken from the Circumstances of the Tenants, are such as these:
1. Leases * are purchased dear in comparison of Freeholds. This every one sees to be false, that knows a Purchaser of a Leasehold Estate, besides the Certainty of his Title, has always greater Interest for his Purchase-Money, than he can make by buying a Freehold: and if it were true, it would be very little to the purpose, since no body is obliged to purchase a Lease, if he does not think it worth his while.

2. Marriage-Settlements are sometimes made upon Leases †, and it is inconvenient they should be uncertain. To this I answer, that it is very desirable Marriage-Settlements should be as secure as possible; but every body ought to be contented with such as they have, when they cannot have better without doing injustice to others. People sometimes marry with a prospect of continuing in a Farm, which they look upon to be a Pennyworth: but is this expectation of theirs ever thought a sufficient reason to tye down the Landlord, and oblige him to accept of them

* P. 66. † P. 66, 68.

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them as Tenants upon the old Rent, whether he thinks the Conditions reasonable, or likes them for his Tenants or not? If it be said, it is inconvenient to the Lessee to be liable to such uncertainty, I readily own it is: But pray let me ask such an one; Did not you purchase your Lease liable to all the uncertainty you complain of? Was not the price of it accordingly? Must not more have been paid for it, if the Fine had been fixt, and the Tenure more certain? What right have you then to claim of the Lessor a Convenience or Emolument which you never purchased, nor paid for, which he never pretended to sell?

If a thing, being *convenient* for any Person, would give him a right to it, every Owner of an Estate would have a right to be excused from paying Tythes, Rates, or Taxes; for no doubt it would be a great *convenience* so to be. Every Copyholder would think it *convenient* to be free from Homage, Suit and Service, Fines, &c. and to have his Estate enfranchis'd; and every Tenant at rack-rent would think it *convenient* to have his Rent lower'd to his own mind: nay, this notion pursued, would give every Man a right to take from his Neighbour whatever he thought *convenient* for himself. But let no Man blind himself by looking too earnestly after his own Interest; Justice gives no Man a title to any thing because he has a mind to it, and thinks it *convenient* for him: To gain a right to any thing, a Man must have it by Gift of the legal Possessor, or he must purchase it of him, or it must come to him by Inheritance: Now I would fain know by which of these ways Ecclesiastical Lessees have a title to a longer time than is covenanted for in their Leases, or a right to tye up the hands of their Landlords from demanding the real value of their Estates, whenever they can discover it; which is often very difficult for them to do.

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Another Argument of the Enquirer's, is, that a refusal to renew Leases tends to diminish the number of Freeholders †. *Answer*, What if it does? is not the number of Freeholders every day altered, by Estates being sometimes sold out in Parcels, or one Person buying several Freeholds? and yet no body thinks this *dangerous to Liberty*, or indeed of any consequence to the Public, where Matters are transacted *bona fide*, and there is no splitting of Freeholds to serve a turn.

I shall now venture to put two or three of the Enquirer's Reasons together, under the general Head of *Complaint against Ecclesiastical Lessors*: Thus he tells us of the *Murmurings and Complaints that run through the Kingdom, at the strict and vigorous proceeding of Churchmen against their Tenants, their taking indefatigable pains, and using Devises and Pretences unheard of, to levy Money of their Tenants* *. As to those unheard of Pretences and Devices, I can say nothing, till I can hear what they are; *dolus versatur in generalibus*. But it seems, Inquisitions and Surveys are taken with the utmost rigour †; that is, in other words, the Landlords endeavour to know, as exactly as possible, the quantity and value of their Estates; where is the injustice of this? As to Surveys, it is an Article frequently inserted in College Leases, that the Tenant shall bring a Terrar of the Estate every renewal; and if this is not complied with, as it very seldom is, I can see no good reason to hinder the Landlord from taking a survey himself of his own Estate: and if he does, the more rigour, that is, the more exactness it is made with, the more exactly will the value of the Land be known, and the less room will be left for dispute; except the Enquirer fancies, that Land rigorously surveyed will appear to be of a greater quantity than it really is; just as a Person put to the Torture, is sometimes made to confess more than is true.

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† Enq. p. 108. * Enq. p. 3, 4, 22, 78, 87.

† P. 4.

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The real truth of this matter is very often this: The Predecessors of the Lessors here complained of, have been indolent, and neglected to look into the value of their Estates, or have been cheated into a belief of its being a third, or perhaps a fifth part of what it really is: the Tenants expect things should always go on in the old road. Perhaps they have purchased with that expectation; for whatever Tenant has a mind to sell his Lease, will be sure to tell the Purchaser, how low the Fine always used to be. The Purchaser forgets the old maxim, *Caveat emptor*, and is angry with the Lessors, because they happen to be better informed, and do not think it reasonable to give away their just Dues, because those that have gone before them have been imposed upon. *Hinc illa Lacryma*, this is the true ground of the complaint: how justly this is called *imposing a Valuation at pleasure upon the Tenant's Estates* *, let any indifferent person judge.

The complaint goes on, That of late Years, *Fines have been excessive and severe, and dreadful to Liberty; and great astonishment is express'd at the rise of Fines from 100 l. to 300 l. and in other places from 400 l. to 1600 l. and up as high as 3000 l. and from 100 l. to 900 l.* † How Liberty is affected, by a Landlord fixing what price he thinks fit when he is to lease out his Estate, I cannot understand: but I believe I can put an end to the astonishment of the Enquirer immediately; and that only by assuring him, that this wonderful Event of Fines being raised so high above what used to be demanded, was owing to nothing but this, that the Lessors of those Estates have upon examination found the value of them to be four or even nine times as much as their Predecessors had been made to believe, at former renewals. If after this, there is any reason to be *struck with astonishment*, it must be at the knavery and extortion of such Lessees,

* Enq. p. 4. † Enq. p. 69, 70.

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fees, who could have the conscience so to impose upon their Landlords, as to give them but a fourth, or even a ninth part of what was in justice their due. If the Law abhors Excesses of all kinds, as we are told by the Enquirer, p. 72. how detestable in the Eye of the Law is such Extortion as this, which, to enhance the guilt, the Tenants often get an opportunity of practising, by fraudulent and false Asseverations, with regard to the value of the Estate to be leased to them?

Where the real value of an Estate is known by the Landlord, whatever complaints the Enquirer's Correspondent may make, Church and College Lessors are always ready to renew, upon easier terms, than any Gentleman will do, who leases out his Estate in the same manner, as is commonly practised in the West of *England*. Any body that pleases may see these compared in a Book entituled, *the Gentleman's Steward, and Tenants of Manors instructed*, printed for Mr. *Senex*, the Publisher of these Papers. In the mean time, I have one reason to offer in proof of the truth of my Assertion, which I believe will satisfy the Enquirer himself; and that is this: It is for the interest of such fleeting bodies as Churches and Colleges, to encourage the Tenant to renew at a moderate Fine. If a Gentleman who has let a Lease of this kind, refuses to renew for the present, he knows he cannot lose his interest in the Fine, whenever there is a Renewal; if he does not receive the advantage of it himself, he knows his Representative, his Heirs or Assigns will. The case is quite otherwise with regard to Ecclesiastical Lessors; if they refuse a Fine as too small, and persist in such refusal, the whole benefit will accrue to their Successors, who probably may have no relation to them, and in whose favour they have no other reason to refuse any present advantage, but that Justice, which obliges them to do nothing to prejudice their Estates, and put them

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them into a worse condition than they were conveyed to them in, from their Predecessors. In reality, the fault is more apt to lie on the other side; such Corporations are more apt to accept of too little, for fear they should receive nothing, and to anticipate their Funds, by a too easy compliance with the offers of their Tenants, rather than insist upon high and unreasonable demands.

How difficult it is for them to come at the knowledge of the real value of their Estates, no body acquainted with these affairs can be a stranger to: the proper Studies of Churchmen and Fellows of Colleges, qualify them very little for understanding the Goodness of Land, or the Value of a Farm; if they employ any body to look into their Estates, how quickly is the neighbourhood alarmed, and how shy is every body of giving them any information? If the Lessee occupies the Estate himself, there is no way of coming at the value of it, but by knowing what it was last let for, perhaps sixty or 100 Years ago. If it is let to an Under-Tenant, what clandestine bargains are made to conceal the true Rent he pays? I have known so much pains taken to keep a College in the dark, in this particular, that there was reason to believe the Under-Tenant was under the obligation of an Oath of Secrecy; and this was with regard to an Impropriation, where it is exceedingly difficult to discover the value. I have known another Tenant let to a Under-Tenant for so much Yearly Rent in Money, and a certain quantity of Barley; when this Tenant comes to renew, ask him how much he lets his Estate for, and he very gravely tells you of the Rent in Money only, taking no notice of the Barley, or other Considerations. Another I have known, who had an Estate of his own in the same Parish with a College Lease, let his own and the College Estates to the same Under-Tenant, and make a jumble of them together, in order

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order to set his own Estate above the real value; and the College's as much below what it was worth; that so when he came to renew, he might defraud the Society, by giving in a Yearly Rent of their Estate, less than the true. Sometimes Tenants for Lives have, at a Renewal to change Lives, conceal'd the Death of one, when two have been expired. Sometimes, as I am very well assured, an Ecclesiastical Lessee will take a Fine of his Under-Tenant, in consideration whereof he grants him a Lease at a lower Rent, and when he has done so, shew that Lease to his Landlord, as a Voucher for the full yearly value of the Estate.

These are some of the Frauds too often practis'd by Tenants, whereby they do a manifest injustice to their Landlords: whereas these Landlords have it not their power to do them a real injury, whatever hardships may be sometimes pretended, since they are sure of the Term covenanted for, and cannot be forced to renew, if they dislike the Conditions.

But it seems *Groves, Avenues, and Plantations raised by Gentlemen have been demolished* *. To this I answer, that if the places were pointed out, where the demolishing here complained of has happened, and all the Circumstances thereof were set in a true light; I have very good reason to believe, it would appear, the Lessees were so far from having any just grounds of complaint, that the Lessors were the only persons really injured.

His next complaint is, that Ecclesiastical Landlords never consider the Lessees Accidents, and Calamities that happen in Families, the Charge of the Tenant's Condition, and the Number of his Children †. If these reasons are good for any thing, every Landlord in letting or leasing his Estate, instead of considering what his Land is worth an Acre, should enquire what the Circumstances of his Tenant will make it easy for him

* Enq. p. 4. † P. 87.

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to pay; by the same rule Tradesmen should sell their Goods, not at the running Price of the Market, but at such a one as the Pocket of the Buyer is able to reach: but surely such considerations as these are of no force as to Right and Justice; in Compassion there may sometimes happen a case, where they ought to have some weight, and when this does happen, Ecclesiastical Lessors are not so utterly void of Compassion, as the Enquirer would have it believed. I can assure him of my own knowledge, I have seen a College often abate, and sometimes set a Fine less than half the value, purely upon the score of the Tenant's Poverty: and I shall believe Lessors of Church-Lands do the like, 'till I am informed of the contrary.

The Enquirer seems to put his trust rather in the number of his Arguments, than in their force; and therefore we meet with some which seem brought for no other purpose, than as so many Faggots to fill up his Muster-roll: a good many such have already been taken more notice of, than I think they deserve; more of them remain still behind, such as these, "Under-tenants do not pay their Rents well, and if the Lessees are thereby disabled from paying Tradesmen their Bills, or serving the King with their Purfes;" the fault is to be laid at the door of their Ecclesiastical Landlords: Again, "the calamity of the Year 1720 shattered a great many Fortunes, and some of the Sufferers were College and Church-Tenants, the Property of some Lay Estates was then fixt, *i. e.* Contracts were made void, &c*." therefore the Estates of Ecclesiastical Landlords, who were no ways engaged in the fatal Scheme of that time, ought to be reduced and fixed too

I shall venture to leave reasons of this sort without an answer, because I think they will prevail with no Man that is not extremely willing to be imposed upon;

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* P. 92, 93.

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upon ; and go on to some others that make a little better appearance. In p. 28. we have a flourish about the Usefulness of *Husbandry*; it is pity we had not likewise a Dissertation about the Advantages of *Naviga- tion*: they are both Subjects the Enquirer might have exercised his Oratory upon, and perhaps without any contradiction from any body: but these Ecclesiastical Landlords, if we believe him, will put a stop to *Improvements* in *Tillage, Building, Planting, working of Mines, &c.* if Fines are not ascertained †: If this charge be true, it is then time for the Legislature to interpose, but let us see how well it is supported.

With regard to *Tillage*, it is very unlikely that should be discouraged by such a Tenure as secures the Lessee in the Possession of his Land, for so long a term as three Lives, or twenty-one Years. Here is certainly time enough for him to find his account in any methods of Improvement he can put in practice; except the Enquirer thinks it reasonable, that for the advantage of *Tillage*, Lands ought to be taken away from the Owners of them, the Landlord, and given to the Occupiers and Tenants. As for the Husbandman, for whom so much concern is pretended, he will be exactly in the same case, whether Fines be great or small, certain or uncertain: the Lessee, whilst he is transacting with the Lessor, considers himself as a Purchaser, and is for buying as cheap as he can: but when he has got his Lease, he looks upon himself to be at liberty, whether he purchased dear or cheap, to make the best of his Estate, when he is to let or lease it to an Under-Tenant.

Building and Planting are other Articles of Improvement, which it is pretended are discouraged by the uncertainty of Fines; and in the preamble to the Draught of a Bill handed about this Session, for ascertaining Fines, it is set forth, *that Tenants have by an expectation*

† P. 69, 108.

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expectation of being sure of a Renewal upon a reasonable Fine, (i. e. such a one as they should think reasonable) been induced to expend large sums of Money in building and planting. As to building, in College Leases it is usual to insert an Article that the Premises should be kept in good repair, and instead of building more, Application is often made for leave to pull down, not upon the account of the Tenure by Lease, but where there happens to be too much building: in other Cases if a Tenant has a mind to build, Leave is obtained upon very easy Terms, and with assurance of not being raised in the Fines upon the account of the Improvement, where it is really an Improvement to the Estate, for as long a time as can reasonably be desired: for certainly no body can imagine that Ecclesiastical Lessors ought never to share with their Tenants in the Improvement of their own Estates, when they happen to consist of Houses, in great Towns; this would be distinguishing them from the Laity in a manner very much to their disadvantage. We see it is no discouragement to building in and about *London*, that after a certain time the Buildings fall to the Ground-Landlord. And whoever enquires what Lay Corporations do in this respect, will find no reason to complain of Ecclesiastical ones: The City of *London* has a very large Estate of Houses, let out upon Leases; and I am assured the old Tenant has there, seldom any preference when a Lease is expired, but the Estate is often disposed of to the best bidder.

As for Seats, Houses and Gardens of pleasure, upon Leasehold Estates, I think there is no just ground either for raising or sinking Fines upon their account: there is no reason a man should have any abatements made, for having voluntarily, and to please himself, been at an expence, which neither tends to the present nor future advantage of the Lessor; nor does it seem equitable on the other hand,

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hand, that a Gentleman should have a larger Fine demanded of him, because he has made his Habitation more commodious or agreeable to his fancy, without any advancement of the real Profits and Income of his Estate.

If the uncertainty of Fines should discourage planting, how the blame is to be laid upon the Lessors, I cannot imagine; it is usual in these sort of Leases from Corporations aggregate, to make this one of the Conditions, That the Tenant shall plant such a number of Trees, and of such sorts, every Year: That no Timber is to be cut down without leave, which leave is easily obtained, the Landlords coming in for a share, as every body must allow to be reasonable, who considers it is all the Landlords, of right. And if the Share of the Landlord, small as it is, tempts the Tenant, in order to defeat him of it, contrary to the intention of his Lease, under the notion of *Repairs, Estovers, Plowbote, Cartbote, &c.* to cut down Wood, before it becomes Timber; I hope this is not to be laid at the Landlord's door, or to be thought a good reason why his right to the Timber should be taken from him, and his share fixt so low as a twentieth part of the clear profit, as the Bill just now mentioned proposes.

Working of Mines is another Affair in which the Publick is interested, and which it is alledged the uncertainty of Fines is a discouragement to enter upon. I cannot forbear upon this occasion to put a question or two to the Enquirer, and the Person who drew up the Bill: What, are Church and College Lands the only ones capable of the Improvements of planting or working of Mines? May not Timber grow upon, and Mines be discovered in the Estates of private Gentlemen? Is not the Publick interested in the same manner in these Improvements, whoever be the Owners of the Lands, where they may be made? Why then are Ecclesiastical Lessors distinguished here, so unreasonably from others? why are they

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they to be tied down to harder conditions than other Proprietors are? Since, whatever be the ends for which their Possessions were given them by the first Donors, and secured to them by the Laws of the Land, their *right to hold and enjoy them* is the same as that of other People: and it would be the same injustice to divest them of their Property, as it would be to disseize any other of their Fellow-subjects of their Freeholds.

The Law has, to encourage searching for, and working of *Mines*, given several Concessions to the Undertakers thereof. In *Cornwall* any Man may sink a *Shaft* in another Man's Land, to seek for Tin; if he finds any, he is obliged to pay a certain proportion to the Proprietor of the Soil. Whatever Laws and Customs are in use amongst other Proprietors of Lands where Mines are found, I dare venture to promise, Ecclesiastical Lessors will comply with them, as far as by Law they may. The Enquirer himself will hardly think them so blind to their own interest, as not to be willing to come in for a reasonable share of the Treasure which may be drawn out of Mines, rather than let the whole lie buried in the Earth. How much shall be esteemed a reasonable share, they will not desire to be judges themselves; this I think may be fairly insisted upon, that in all Reason and Equity they ought to be upon the same foot with the rest of their Neighbours: and if so, I believe the proportion proposed in *the Bill for ascertaining Fines*, will appear to be much less than in justice they ought to receive. But the more equitable way seems to take no Fines at all in these cases, but to increase the Rent in proportion to the improved value, as I am informed is the way in some places where Mines are found, and particularly in the Bishopricks of *Bangor* and *St. Asaph*.

The Enquirer employs several Pages of his Book to prove, that *the Parliament has in all times zealously interposed*

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proposed to settle Disputes between the Clergy and Laity: Thus this Article stands in the Contents. In the body of the Book *, &c. he undertakes to shew the Interposition of the Parliament, to prevent "*Tenant-Rights being weakened or destroy'd; in not permitting burthensome Payments to be laid upon them, beyond the measure which Custom hath obliged them to, and by obliging the Temporary Lord, to renew, according to ancient use.*"

Here I find great reason to complain of the unfairness and disingenuity of this Writer, in taking so much pains as he does to impose upon his Readers by false Quotations of Acts of Parliament, such as many of his will appear to be, to any one who will take the pains to read over the Acts themselves. The 32 H. 8. c. 28. quoted p. 44. was to secure Tenants their Term of Years covenanted for in their Leases, against the Successors or Heirs of such Lessors as at the time of leasing, were possess'd only by right of Church, or in right of their Wives, not a word through the whole Act about any right of renewal secured to the Tenants: so that his memorable and pathetic Preamble † is not at all to his purpose, but is brought here to insinuate a manifest Falshood, viz. "that the Tenants were cruelly expulsed from their Farms, by being refused a renewal, for which they had paid great Fines, &c." Whereas the truth was, the Tenants were by pretences of private Gift of Entail, or by alledging the former Lessors had not sufficient power to lease, expulsed by the Heirs or Successors of those Lessors from their Farms, before their Leases were expired. This was a piece of injustice very fit for the Parliament to prevent, and this is all the intent and meaning of the forementioned Act; which I observe further, concluded Lay and Ecclesiastical Landlords under the same Law, as in justice they always ought to be.

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* Enq. p. 43. † P. 45.

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The enabling Statute * gave Ecclesiastical Corporations sole, a power of leasing their Lands, without the concurrence of the Dean and Chapter, which before was necessary. This Power it seems was made an ill use of; and therefore by 1 Eliz. c. 19. & 13 Eliz. c. 10. all Ecclesiastical Lessors were restrained from letting longer Leases than for twenty-one Years or three Lives. Here I observe, 1. That these Statutes cut off all manner of pretence for the pretended *Immemorial Custom of Leasing*, for three Lives or twenty-one Years; since it is very evident from these Statutes themselves, that before they were enacted, Ecclesiastical Lessors had a power to let longer Leases. 2. These Statutes were not made for the benefit of Tenants, not a word of ascertaining Fines or Renewals; the whole design of them was, to prevent Ecclesiastical Lessors from injuring their Successors, by letting long Leases. So that we find here no such Interposition of the Parliament as the Enquirer undertook to shew us, between the Clergy and Laity, no obliging Ecclesiastical Landlords to a renewal; which would have been cramping and invading their Property; but Statutes made for very different Purposes, viz. to prevent that Property from being alienated, and to secure its being transmitted to their Successors, entire and without any diminution; "*because long and unreasonable Leases made by Colleges, Deans, and Chapters, &c. be the chief Causes of the Dilapidations of all Spiritual Livings and Hospitality, and the utter impoverishing of all Successors,*" are the Reasons given in 13 Eliz. c. 10. In this sense the Estates of Ecclesiastical Lessors are *in custodia legis* †, that the Law will not suffer 'em to be alienated even by the consent of the Possessors, who are for that reason ranked sometimes amongst such Persons as cannot dispose of their Possessions; such as *Infants, Ideots,*
Persons

* 32 H. 8. † P. 23.

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*Persons of Non-Sanity of Memory, Estate Tail, or under Coverture**.

One Instance of the Parliament's Interposition brought by the Enquirer, p. 51. seems to be something to his purpose, if you take his account of it; but if we examine into the affair, we shall find he has misrepresented it in an infamous manner. He tells us "that in the 26 H. 8. a *Tenth* was granted "by the Clergy out of Ecclesiastical Benefices and "Preferments; after which Inventions were used "to lay the burthen of this Tax upon the customary "Estates and Purchases of the Tenants, by drawing "them into Covenants and Agreements for that purpose; that this soon gave a general uneasiness, and "came at last to the ears of the Parliament, by "whom it was enacted, *Stat. 27 H. 8. c. 17.* that "no Lessee of any Archbishop, Bishop, &c. should "be chargeable to pay the same, by reason of any "Covenants, Bargain, Bond, Condition, Clause of "Re-entry, or other things *before* made and concluded." Here it may be taken notice of in the first place, the 26 H. 8. did not grant a *Tenth* to the King, which would have been a Temporary Tax, but something very different from it, *viz.* the First-Fruits and Tenths for ever. 2. Whereas the Enquirer would have it believed, that after this Act, Ecclesiastical Lessors drew their Tenants into disadvantageous Agreements, and obliged them to pay their First-Fruits and Tenths; and that upon this the Parliament by a new Act rescinded those Agreements; this is plainly all Invention and Forgery: for this second Act was made the same Year with the former, and in the same Session, which began *Feb. 3.* and ended *December 18.* and both these Statutes are in Law considered as of the same date, and must be pleaded as such; nor could there, in so short a time, be

* 19 Car. 2. c. 2. & 27 Car. 2. & 29 Car. 2. c. 4.

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be room for Lessors drawing their Tenants into such Agreements as the Enquirer pretends the Parliament made void by the second Act, which is plainly explanatory of the former, and enacts, that "Farmers or "Lessees of Church-Lands should not be chargeable "to pay the First-Fruits and yearly Pension of the "tenth part granted to the King in this *present Session of Parliament*, by reason of any Covenant, Bargain, &c. *heretofore* concluded." Every body will see that the word *heretofore* in this latter Act, must refer to Bargains, &c. made before the former Act of the same Session, before which it might be usual for Lessors to oblige their Tenants to pay incidental Taxes, such as a fifteenth or a tenth; nor would there be any injustice in this, if they were otherwise considered, as to be sure they were in their Fines: But lest such Covenants *heretofore* made, for the Tenants to pay other Taxes, should be construed to oblige them to pay this new Grant of First-Fruits and Tenths, the second Act comes in with a Proviso to the contrary. This is very little to the purpose of the Enquirer, and he seems to be sensible of it, and therefore to serve his turn, he has thought fit to date the two Acts as of different Years, one 26, the other 27 H. 8. and in citing the last of 'em, to alter the Words of the Statute, and give it a different meaning, by inserting the word *before*, instead of *heretofore*. How such quoting of Acts of Parliament would go down in a Court of Judicature, I leave the Enquirer to consider at his leisure.

The Case of Sir *Thomas Woodcock* * is particular; all the Lives in this Lease expired in the Times of Confusion, so that there might be very good reason for a compassionate Consideration of it, so soon after the Restoration as 1661: and this may very well account for the other *Recommendatory Letters from King and Council* mentioned by the Enquirer, p. 55. To which let me add, that at the

* P. 53.

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same time the case of some, who might merit compassion, were recommended to favour, there were several other Letters from King and Council of another sort to Ecclesiastical Lessors*, recommending to them not to renew Leases of some of their Estates, particularly such as lay convenient for them, and near their Habitations.

The Enquirer's memorable Instance of Justice, with regard to the Tenants of the Dutchy of Cornwall, is not so parallel to the present Case as he would persuade us to believe †: *The Dukedom of Cornwall* is an Inheritance under a special Form of Limitation, differing from the ordinary Rules of Inheritance at the Common-Law ‖, whereupon some questions did grow, whether Leases let thereof could be good, longer than the Life of the Lessor. Therefore the 21 Jac. 1. c. 29. enabled the then Prince of Wales, Charles the First, to let Leases, which should be good against his Successors, &c. for any Term, not exceeding three Lives or thirty-one Years. The like Statute was made again 13 Car. 2. c. 4. to enable the King to let such Leases, but reserving a higher Rent than before, viz. a fourth part instead of a twentieth. Upon the Petition of the Tenants, the King was by 22 Car. 2. c. 7. enabled to renew at the old reserved Rent, but in all probability the Fines were accordingly. In all these Statutes, there is a Saving, (not to the Tenants, as the Enquirer tells us) but to all others, except the King, Duke of Cornwall, and their Representatives, of their Rights and Claims, &c. out of the Lands and Tenements, &c. of the Dutchy.

One Reason given by the Enquirer, why Fines should be ascertained by the Legislature, is, that *no Man ought to be his own Judge*. This Maxim is very true, with regard to a disputable right between Man and Man, but has no place in the case before us. If an Ecclesiastical Lessor has an Estate to lease, he may be so far his

* In Decanatu Chichestr. † P. 85. ‖ 21 Jac. 1. c. 29.

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his own Judge, as to demand what Fine he thinks fit, for the same reason, that any Gentleman who has an Estate to let or lease, may demand what yearly Rent he pleases for the same: if the demands of either are too high, they can only hurt themselves, they cannot injure the Tenant, who may refuse the Bargain if he thinks it disadvantageous. If a Gentleman will not let his Land at the Market-price, he must be forced to keep it in his own hands; and if Ecclesiastical Lessors will not renew upon reasonable Fines, they will get no Fines at all. As for the prospect of the Leases running out, and falling into their hands, that is worth very little to most of them, and has very seldom happened, but when Lessees have held off, and deferred a renewal, in hopes by that means to get it at last, upon their own unreasonable Terms.

It is common in the West of England for Gentlemen to lease out their Estates after the same manner that Colleges and Churches do; there no body thinks the Tenant has any just ground of complaint, if he enjoys the Estate leased to him, according to the Conditions covenanted for: when the Term is expired, how convenient or desirable soever it be for the Tenant to renew; if the Landlord refuses such renewal, no body will accuse him of injustice, or think it reasonable, the Legislature should interpose, to fix a price upon his Property, and force him to grant a new Lease to his Tenant, whether he likes him, and the Conditions he offers, or not. As for Lay Corporations, some of them, particularly the City of London, often refuse to renew to the old Tenant, and when a Lease is run out, sell the Estate to the best bidder. And if this be the case with regard to single Men and Lay Corporations, why should Ecclesiastical ones be tied down to other Rules? Where is the difference as to right, between single Men and Corporations, between Laymen and Ecclesiastics? I am sure the Law

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makes none; so that this Question remains still unanswered, notwithstanding all the Enquirer has advanced to shew a difference, as will presently appear.

He tells us, *p. 8.* there is a wide difference between Lay-Landlords and Ecclesiastical; because, 1. *Lay-Fees are pure and unconditional*, whereas *Ecclesiastics are only Tenants for Life*. But what is this to the power of letting or leasing? it makes no difference as to that, which is the sole thing in question, whether the Landlord be seized in Fee, or is a Tenant for Life, in the manner Ecclesiastics are, to whom the Law has given a full power to lease for three Lives, or twenty-one Years: the only real difference is, that Tenants in Fee may alienate, and are accountable to no body; whereas Ecclesiastics cannot alienate, and may be accountable for waste: but this is nothing to the purpose of the Enquirer.

The next difference he assigns, *p. 9.* is, that *Lay-Tenants come in by Descent or Purchase*, but *Ecclesiastics by Free-gift*. But surely this makes no manner of difference as to the right a Man has to make the best of his Estate, by letting or leasing it, to consider, whether it came to him by Purchase, Descent, or Gift.

His next difference, *p. 9.* is, that *Lay-Persons are unaccountable*, but *Ecclesiastics are accountable* for the Profits they make of their Estates. To prove this, he would make us believe Bishops, &c. were only designed as Almoners.

But what is this to the Right Ecclesiastics have to demand Rent and Fines, to tell them what they should do with the Money when they have received it? He brings a passage out of an Ecclesiastical Writer, *p. 12.* who says the Possessions of the Clergy belong to the Poor; *i.e.* what can be spared from their Maintenance should be employed in Hospitality and Charity. Now I can quote him several Writers who will tell him the rich Laity ought to employ what they

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they can spare, in Charity and Beneficence, and yet, no body ever thought this a good reason to oblige them to let or lease their Estates for half the worth of them. Cases of Compassion I have already spoke to; I have likewise shewed, that to enable 'em to give Alms, was not the only reason why Donations were given to Ecclesiastics, and indeed it is going very much from the point, to enquire at this time of day, how the Clergy were maintained formerly, or to deduce from Bishop *Burnet's* Rights of Princes*, or Father *Simon* †, the several Steps by which they came into the possession of their present Rights: the Question is now, whether there be any good reason for the Legislature to despoil them of those Rights, and divest them of that Property, in the enjoyment whereof they are, and a long time have been, protected and secured by the same Laws as the rest of their Fellow-Subjects.

He tells us, *p. 90.* if a *Dignity in the Church be considered only as a public Office of Honour and Trust*, the *Fines ought to be certain*, as the Fees of other Offices are. Here we have another Specimen of the Enquirer's Reasoning: for, 1. who ever thought that a Bishoprick ought to be consider'd in this view? And 2. if it were considered purely as such, the Enquirer's Inference would by no means follow. It is fit the Fees of Offices should be fixed, that no body may be imposed upon by exorbitant demands, where the Income of an Office is to be raised by Fees: but if any Officer has an Estate assigned, the Rents of which he is to receive for the execution of his Office, the ascertaining Fees in other Cases, would never be thought a reason why he might not make the best of his Estate.

But if a Dignity of the Church is considered as a Spiritual Employment, the Enquirer, *p. 91.* thinks there is the stronger reason to fix the Fine, because Avarice is a great Crime in Clergymen. Why truly so it is in any other Man that pretends to be a Christian,

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Christian, or indeed so much as a morally good Man; but then he ought to know, that no Man incurs the guilt of Avarice, because he buys or sells at a Market-price, because he lets or leases his Estate at the same rate as the rest of his Neighbours do.

The Enquirer tells us, *p.* 74, 75. "that in the worst of times, when Tenants of the King and others were over-run with Fines and Prestations, the Law provided an Umpire, so that a Man was relieved if he was over-rated for a Fine or Tallage; that the Bishop of *Salisbury* was limited as to taking a Fine or Tallage, &c." Now, whoever will but read over the whole Chapter of *Madox's History* of the Exchequer about Tallages, from whence he has taken all he says upon this head, will find, that Tallages and Fines are very different things; whereas the Enquirer, to make this appear more to his purpose, talks of them as of the same nature. We may learn from *Madox*, *p.* 511. that sometimes a Fine has been paid instead of a Tallage, and *p.* 480, 484, 504, that Tallage or *Assisa* [an Assesment] was a Tax anciently set by the King's Justiciars in their several *Iters*, afterwards by Commissioners for that purpose, raised upon the King's Demeans, Escheats, and Wardships, and upon the Burghs and Towns of the Realm, and in them sometimes by Poll, and sometimes in common †: that when the King's Demeans were granted away, sometimes the Tallage was reserved to the Crown, *p.* 502. sometimes the Tallage was granted away with the Lands, in which case the Grantee had a power to tallage or tax the Tenants, whenever the King tallaged his own Demeans, *p.* 516. sometimes the King granted an exemption from Tallage to particular Persons, *p.* 515. All that appears to have been done to redress any complaints made upon this account,

† *Mad.* *p.* 489. *not. n. tallagium civitatis Londonia assisum per capita, &c. et p.* 516.

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count, was to ease those who could plead an exemption from Tallage, because their Lands were not Demean of the King, 498, or were in *Frankalmoin*, 512. or that they did not belong to the Town of which Tallage was demanded, nor exercise merchandize therein, or that they were tallaged beyond their Abilities, 510. or higher than their Neighbours, 511. None of these Cases are much more to the purpose, than if the Enquirer had gone about to prove the reasonableness of ascertaining Ecclesiastical Fines, from the right any Person who is over-rated in an Assesment, has to appeal to the Commissioners of the Tax, and to have redress where he is aggrieved.

The Complaints made in Parliament with regard to Probates of Wills and Mortuaries, mentioned by the Enquirer*, are very little to his purpose: the Payments for Probates and Mortuaries were in the nature of Fees; every body knows how apt Officers are to raise their Fees; and these, it seems, were grown exorbitant, by the Exactions of the Officers, for of them the first Statute 31 E. 3. c. 4. complains, in these Words; *Whereas the Ministers of Bishops, and other Ordinaries of Holy Church, take of the People grievous and outrageous Fines, for the Probate of Testaments, &c.* Hereupon the Parliament interposed, as it is fit they always should, in all Courts, to reduce Fees, when they grow unreasonable; but how does this show the equitableness of their interposing, to fix the Terms of leasing and letting Estates? What similitude of Reason can any body find for settling Fees, and ascertaining Fines? These cases are so little alike, that I can guess no reason why the Reader is troubled with all this, except that the Enquirer was willing to take every handle he could, of complaint against the Clergy, and had a mind to introduce that polite Expression about the Bishops, quoted by him *p.* 82. out of *Hollingshed*.

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* *P.* 80, 81.

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I have before observed †, that when the Parliament has interposed between Landlord and Tenant, Ecclesiastical and Lay Landlords have been concluded under the same Law, as in justice they ought always to be; it will not be improper to give another Precedent or two to this purpose. After the Fire of London, there was an Act ‡ made, which appointed Commissioners, viz. The Judges and Barons of the Exchequer, with a Power to oblige Landlords to grant Leases of Houses to be rebuilt, for any term not exceeding forty Years, at such Rents or Fines, or without any Rent or Fine, as they [the Commissioners] should think fit, &c. This Commission was continued, or others granted with the same Power, upon the like Occasions, of other Fires, in London, Southwark, and Northampton*. These were extraordinary Cases, and deserved the interposition of the Legislature, which considered it as just, that every one concerned should bear a proportionable share in the loss, according to their several interests: These are the words of the Stat. 19 Car. 2. and therefore the Landlords were here brought in to bear such a share as the Commissioners thought reasonable; but then in all these instances care was taken, that all Landlords should fare alike: Infants, Females Covert, Ideots, Persons of non-sane Memory, or beyond the Seas, Tenants in Tail, Bishops, Deans and Chapters, and other Ecclesiastical Persons, and their Successors, Corporations, and all other Person or Persons, Bodies natural and politick, their Heirs and Successors. *ibid.* But our Enquirer is for a different method of proceeding; he has the conscience to plead for divers Weights and Measures, and is for having the Property of Clergy and Laity ascertained and fixt, by different Laws.

I come with great pleasure towards the End of the Enquiry, after tediously going through some of the weakest

† Supra, p. 30. ‡ 19 Car. 2. c. 2.
* 22 & 23 Car. 2. c. 14. 25 Car. 2. c. 10. 27 Car. 2.

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weakest Reasoning and most shameful Prevarication I ever met with. Here we find the Enquirer* very full of Fears, which are, in my opinion, very groundless ones; he is under great apprehensions about the perpetual Fund of the Bounty of Q. Anne, what use will be made of it, when all the small Livings are augmented, and Improvements and Abbey-Lands bought in: but he recovers himself a little, with the hopes, Posterity will take care of this Fund when it grows to be dangerous. I can tell him another thing, which may perhaps help further to lessen his fears; this Fund, according to the computation of good Judges, will not in all likelihood, under some Centuries, be sufficient to effect what it was designed for; so that for the present, he may be very easy, as to its engrossing all the Estates in the Kingdom.

The Enquirer has one, and but one Consideration more to offer, "for ascertaining Fines, from which it appears to him to be absolutely necessary, to settle the Rights of the Laity, upon such a foundation as may never be shaken †." With all my heart; I would not have any thing I have said, wrested to prejudice the Rights of the Laity, which I think may very well be secured, without any invasion of the Rights of the Clergy. It is certainly agreeable to Law and Equity, that every man, whether Lay or Clergy, should be protected in his just Rights.

But let us hear the important consideration, and it is this: In the Preface to the Bishop of London's Codex, the restoring of ancient Discipline, which has been lost by disuse, is contended for. This puts the Enquirer into as great a fright, as if there was a design to bring in the Inquisition amongst us; and yet he may find in his Com-

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* P. 97. † P. 98.

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mon-Prayer-Book, which has the sanction of an Act of Parliament, Wishes for the restoring of antient Discipline, express'd in as strong Terms as in this Preface, which gives him so much umbrage, which he stiles an enterprizing Piece, and thinks so dangerous to Liberty. If Ecclesiastical Power has been formerly, and in some places still is, made an ill use of, this fine Reasoner might have known that the abuse of a thing is no reason for an entire abolition of it; if it were, the best Laws ought to be abrogated, because ignorant or ill-designing Men will sometimes wrest them to wrong Purposes, and make them Instruments of Injustice. But to clear at once these Passages from the Misrepresentations of the Enquirer, we need only turn to the Preface itself, and read them as they stand there; and we shall find that the Design of the two first was to shew, that in the Reformation hitherto made of our Church, it has undergone no essential Alteration in its Constitution; but that the ancient Foundations of Episcopal Power, as to Ordination, Spiritual Jurisdiction, and Discipline, have been preserved: And that if any further Reformation should ever be attempted, the best way to make such Reformation unexceptionable and inoffensive, will be by restoring the ancient Discipline of the Church, which has been lost by disuse, where *it appears to be for the benefit of the Church, and may effectually answer the ends of Religion* *. The other Passage in the Introductory Discourse is to shew, what I believe the Enquirer will find it difficult to disprove, *That every Bishop hath Authority by the Word of God, and the Laws of the Land, to correct and punish such as are unquiet, disobedient, and criminous, in his Diocese, by the exercising Spiritual Discipline* †. The next passage stands thus: The Preface having mentioned the inconvenience of the

* *Pref. to the Codex, p. vi. & xv.* † *Ibid. p. xvii, xviii.*

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Temporal Courts encroaching upon the Spiritual Jurisdiction, and taking business of a Spiritual Nature from Spiritual into Temporal Hands, says, *the Clergy themselves may well be presumed the best Judges, what are the properest Methods for promoting Religion and the Interest of the Church in all Kinds, how far their own Strength will carry them in that way, and when it is that in order to those ends they need the Assistance of the State* *. The last Passage runs thus, *that as in Matters judicial so in Matters prudential, the Clergy are the most proper Assistants to the Prince in the Administration of all Affairs which concern Spiritual Persons and Spiritual Things* †. Now where is the wonder, that those Men should be the best Judges in any Affair, who have taken most pains in the study of it, and may be supposed to have it most at heart? The common Maxim *credendum est Artifici in arte sua*, would make me more inclinable to consult Mr. Fleetwood in Matters of Law, if he is of the Long-Robe, than another Man, whose Studies have been turned another way; except I should find reason to believe him ignorant, or guilty of Prevarication in his own Profession.

But I may venture to leave the Codex and the Preface to speak for themselves. The Learned Prelate who has obliged the World with that Performance, with a design to *promote Regularity and Discipline to the improvement of Religion and good Living, both in Clergy and People* ‡, and to be serviceable to the Clergy in ascertaining and supporting the Rights of the Church, if the Enquirer will give me leave to use that *thread-bare Expression* ||, and with other excellent Writings in defence of our common Christianity, must expect to meet with

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Obloquy

* *Pref. p. xxx.* † *Ibid. p. xxii. v. tot. loc.* ‡ *Ep. Dedic. to the Codex.* || *Enq. p. 25.*

Obloquy and Opposition, from all those who are Enemies to either; and that for the very same reason, for which he has the Thanks of all who wish well to the Cause of Religion and Virtue.

To draw the whole into a short view: The Clergy being devoted and consecrated to the immediate service of Religion, and Universities and Colleges, being founded for the promoting Learning, Virtue and Piety, have ever been hitherto the peculiar Care of Christian States; who have expressed that Care, not only in providing for their Quiet and Security, against all kinds of Oppressions and Invasions of their Rights, but in frequently bestowing upon them particular Privileges and Immunities. If particular Persons are sometimes found blame-worthy, let them alone, answer for their Faults, to their Superiors, or to the World: This can never, with equitable Judges, be imagined to throw a blemish upon the Institutions themselves, the End and direct Tendency whereof, is manifestly for the good of Mankind, if Religion Learning and Virtue, are of any use or estimation: these Ends cannot be successfully promoted, without setting apart and maintaining proper Persons in Churches and Colleges for that purpose: for which reason, he can never be a true Friend to the Public, whatever pretences to public Spirit or other false Colours, he may endeavour to varnish over his pernicious and unjust Intentions with, who pleads for the enacting of a Law to break in upon, and diminish the undoubted Rights of Persons so set apart, and to place their Property upon a worse foot than that of the rest of their Fellow-Subjects.

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APPENDIX.

A Few Days after the Enquiry came out, a Pamphlet, generally supposed to be written by the same Author, was published, by *J. Roberts* in *Warwick-Lane*, with this Title, *A Proposal for enabling the Clergy to accept advanced Rents in lieu of Fines*. It might with greater Propriety, have been stiled, a Proposal to compel the Clergy to accept advanced Rents, &c. for this is plainly the drift and design of the Proposer. A good deal of what he writes will want no further Remarks than have already been made upon the Enquiry; the rest I shall now proceed to consider, as far as I think there is any occasion for it.

To screen his Proposal from the imputation of Novelty, he quotes two or three Acts of Parliament for Precedents, but I think with much the same Faithfulness as we meet with in the Enquiry. The 32 *H.* 8. *c.* 28. is not for his purpose, as appears from the
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account I have given of the scope and intent of it p. 30. The 14 Eliz. 2. c. 11. restrains Ecclesiastical Lessors from letting Houses for a greater number of Years than forty, and prohibits any such Houses being alienated, except there be secured to the Lessors and their Successors Lands of equal yearly value. These Acts are cited by him to show that the Law allows of alienating Church Estates under certain Restrictions, p. 4. It is true, it does so; but then it is under such Restrictions as are sufficient Security against any injurious Disinheritance of the Church. Houses cannot be alienated except for an equivalent in Land, and such an exchange may be fair and equitable, because Land is capable of improvement as well as Houses: The case is quite otherwise with regard to such fix'd yearly Payments as the Proposer contends for; these continue unalterably the same, how much soever the value of Money is changed. He tells us, p. 6. that the Supposition that Money may in time greatly abate in its value, is no objection to his Scheme; but I believe no body else can be of the same opinion, except such as would be glad to see the Rights of Ecclesiastics broke in upon, and their Estates settled in such a way, that they must perpetually decrease in value for the future. I will not pretend to say, that for the next 300 Years to come, the value of Money will sink in the same proportion as it has for the last 300 Years past, but that it will sink, I believe, is made a doubt of by no body; and if it does, the lower it falls, the greater will be the injury done to all those who shall be compelled by Law to alienate their Estates, and in lieu thereof accept of stated yearly Payments.

The 22 Car. 2. c. 11. impowers the Dean and Chapter of St. Paul's to grant Leases of some Ground, for forty Years, and so from forty Years to forty Years, for ever, at a stated yearly Rent and Fine: This

This is quoted by the Proposer, p. 6. to shew that in the Eye of the Law, the fixing a certain yearly Rent for ever, in lieu of Land, has not been esteem'd injurious to the Church. Here it may be observed, that this Act was of a public Nature, for rebuilding the City of London, enlarging the Streets, &c. that a Commission was appointed, with the same Powers with that I mentioned p. 40. that the Ground here leased out at a stated Rent, was for a public use, viz. for Newgate-Market, and that all was done with the consent of the Dean and Chapter. How is this a Precedent for a Law, to oblige Ecclesiastical Lessors to accept stated yearly Rents instead of Fines, without and against their consent?

From Precedents the Proposer comes to the Reasonableness of the thing, and asks two Questions: 1. *May not the expectation of a Fine be recompensed by a yearly Rent?* 2. *What damage can accrue to the Church if their only valuable Interest be preserved?* One answer will serve for both these Questions, and I shall give it in few Words. If all the valuable interest of the Lessor is secured, a yearly Rent might be equivalent to the expectation of a Fine; but it is not an easy matter to secure that Interest, or adjust the Rent so as to make it a certain equivalent. The Scheme of the Proposer is insufficient for both these Purposes, as will appear upon examination of the Particulars whereof it consists.

1. The first is a Supposition from Calculations in the *Philosophical Transactions*, that it is about an even chance, that in a Lease for Lives, the eldest whereof is about forty-five Years old, the second thirty-two, the youngest twenty-one, one of them will die in twelve Years.

2. That therefore a yearly Payment, commencing immediately, of a twelfth part of the Fine which would

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would be due for a renewal, upon one Life expired, is an equivalent for the whole Fine.

3. That the whole Fine, a twelfth Part whereof is proposed to be annually paid, should be the same as was paid at the last renewal for one Life expired, if granted since the Year 1712. but because since that Year Fines have been generally raised about a third part more than they were before; therefore if the last renewal was before 1712, the yearly Payment is to be an eighth part of the last Fine.

4. That Ecclesiastical Lessors are to release and alienate their Estates to the Lessees for ever, upon assurance of such annual Payments as are here proposed, in lieu of Fines, over and above the ancient reserved yearly Rents.

5. That the Lessees are to covenant for themselves, their Heirs and Assigns, not to do any act whereby the Premises should be so much abated in value, as to be under the double value of all the reserved yearly Rents both old and new; or if they do any such acts, they are then to subject to the same Powers of Coercion by the Lessors, other Lands of yearly value double to the Premises.

As to the first and second of these, it may be observed, that supposing the Calculation right, for three Lives, of the Ages therein mentioned, this will not help us to a general Rule, for Lives of Ages different from these; but whenever there is such difference the chance of a Life dropping is different, and consequently will require a different yearly Payment, as an equivalent for the expectation of a Fine.

To the third, That it is so far from being certain, that it is not at all probable the value of all Ecclesiastical Estates was exactly known, and the Fines adjusted accordingly, at the last renewal for one Life expired, whether such renewal was before or after the

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the Year 1712: and therefore it would be a manifest injury to Churches and Colleges, to make the Fines last paid, a Rule for future Payments. And moreover, if it were certain the last Fines were all set to the full value, yet would Ecclesiastical Lessors be very great Sufferers if the Proposer's Scheme were put in execution; because a fix'd yearly Payment would not only sink in real value, as Money, and the Interest of Money falls; but would also, against all Reason and Equity, cut the Landlords off from ever reaping any advantage by the future improvement of their own Estates.

The fifth particular seems indeed to consult the Lessors security for their Rent, but would make it more difficult for the Lessees to alienate than it now is, and in some Cases utterly impracticable; not to mention that the whole Scheme, besides the manifest injustice of it, would subject the Persons interested to many Disputes in Law, which are in the present situation avoided. The Proposer talks, p. 6. of the Tenants being alarmed. But at what? they cannot be really injured, though perhaps they may be sometimes disappointed in their unreasonable Expectations: they need not fear always having renewals upon terms reasonable, and evidently advantageous, because better than they can get of any Lay-Lessor: and yet the real value of an Estate cannot surely be less to the Tenant, because the Landlord is an Ecclesiastic. It is sufficient for my purpose, without entering into any Calculations, that whatever a Lease for Lives or Years is worth, purchased of a Lay-Landlord, the same Lease is certainly worth as much if purchased of a Church or College, notwithstanding the Proposer's Insinuation to the contrary; and whatever Ecclesiastical Lessors abate in Fines for renewing, of what a Lay-Lessor would demand, and it is notorious they do abate a great deal, is clear gains

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to the Lessees. If they are not satisfied with this, there is no reason for the Legislature to interpose in their behalf, to give them the just Rights of their Landlords, by ascertaining Fines. When Fines arbitrary for Copyholders were limited, it was probably, because the Law, agreeably to the intent of the first Grantors, designed them an inheritance, under certain Conditions, and Fines beyond the value would tend directly to their disherison. Nothing like this can be pretended in favour of Church and College Tenants, who have no Claim but during the Term, and according to the Tenor of their Leases: I mention this now, because I was not so well apprised of it, when I writ, *p.* 7. that I was not able to give a Reason for Copyhold arbitrary Fines being restrained by Law.

But I think enough has been said to the Proposer, as well as the Enquirer, to make the Unreasonableness and Injustice of their Schemes sufficiently appear, to every disinterested and impartial Reader.

F I N I S.

