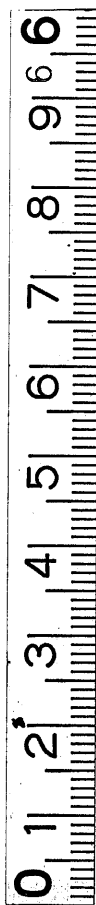


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THE <sup>N<sup>o</sup> 2<sup>o</sup></sup>  
 REASONABLENESS  
 OF  
 Church *and* College Fines  
 ASSERTED.  
 AND THE  
 RIGHTS  
 WHICH  
 CHURCHES *and* COLLEGES  
 Have in their ESTATES defended.

SECOND EDITION.

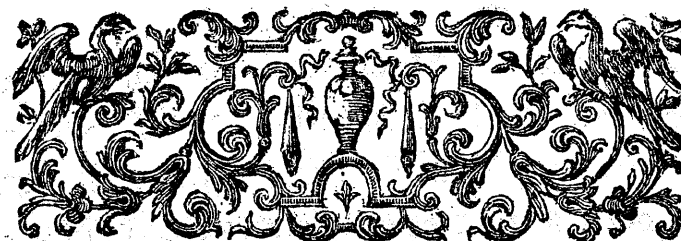
In Answer to a late Book, Entituled:

*An Enquiry into the Customary-Estates and Tenant-Rights of those who hold Lands of Church and other Foundations by the Tenure of Three Lives and Twenty One Years.*

L O N D O N:

Printed for the Author, and Sold by R. Montagu at the General Post-Office in *Great-Queen-Street* near *Drury-Lane.* 1731. ↑ (Price One Shilling.)

THE  
 REASONABLENESS  
 OF  
 Church and College Fines  
 ASSERTED  
 BY  
 JOHN WILSON  
 CHURCH AND COLLEGE FINES  
 ASSERTED, &c.  
 BY  
 JOHN WILSON  
 CHURCH AND COLLEGE FINES  
 ASSERTED, &c.



THE  
 REASONABLENESS  
 OF  
 Church *and* College Fines  
 ASSERTED, &c.

**I**F the Clergy's using their utmost Endeavours to defend and support the *common Rights and Liberties* of the Laity lays any Obligation upon *these* to defend and support the *common Rights and Liberties* of the Clergy, I am sure there never was a Time when the Clergy had more just reason to expect the Favour and Assistance of the Laity than they have  
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at present. Since the Christian Religion was first planted in this Kingdom the Ministers of it have never shewn a freer Spirit, or exerted themselves more vigorously in Vindication of *Liberty of Conscience*, and the *common Rights* of the Lay-Subject, than they have of late Years; and I believe I may, without fear of being thought too partial, say, That that happy Constitution both in Church and State which we now enjoy, and that invaluable Security of our Religion and Laws, which is founded in the Establishment of the Protestant Succession in the *Hanover* Line is, not a little, owing to the vigorous Opposition that was made by the Clergy to the arbitrary Measures that were taken in the Reign of the late King *James*.

This then being the Case, it is hop'd that the Clergy may, as they have reason, with Safety rely on the Lay-part of the Legislature for their Protection  
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and Assistance in the Support of those Rights and Claims which are founded in Reason and Equity, and which, as they are so, they enjoy in common with others.

But in all great Bodies of Men, as there will always be some who will receive real Injuries, so will there always be others who will fancy themselves injur'd, and who, not having Reason on their Side, will endeavour to supply the Want of it by Noise and Cry. ---- I profess that I cannot but look upon the present loud Complaints against Church and College-Lessors to be of the latter kind. But every one ought to judge for himself; and since none can make an impartial Judgment without considering what may be said on both Sides, this has induc'd me to lay my Thoughts in favour of Church and College-Lessors before the Reader in the following Papers; and this I shall endeavour to do in as little

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Compass, and as plain Words as possible; only begging of the Reader, that he would read with Patience and judge with Calmness.

PROPOSITION.

All those Complaints which, of late Years, have been made by Laymen against Church-men and Fellows of Colleges, upon account of the Leases which the former hold of the latter, and under a Pretence that *these* demand exorbitant *Fines* for the renewing of the said Leases; all these Complaints, I say, will appear to be highly unreasonable from the three following Considerations.

I. Because Church-men and Fellows of Colleges have always taken less *Fines* for the *Renewals* of the Leases held under them, than such *Renewals* were really worth.

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The Value of a *Renewal* of 7 Years laps'd in a Lease of 21 Years, is worth very near 3 Years Rent. For, at this Rate, the whole Lease would be valu'd at about 13 Years Purchase; and so the Lessee would make 5 *l. per Cent.* both for the Money which he pays for his *Renewal* of 7 Years, and for his remaining Interest of 14 Years to come in his Lease. --- Supposing then that Money bore 5 *l. per Cent.* to give 13 Years Purchase for a Lease of 21 Years, or 3 Years Rent for renewing of 7 Years laps'd in such a Lease, would be placing Money out at 5 *l. per Cent.* and so in Proportion in Leases for Lives, considering *these* as equivalent to Leases of 24, 25, 26, 27, 28 Years, according to the Goodness of the Lives.

This is the Intrinsic Value of such Leases, and of the common *Renewals* of them; and it is built upon this plain Proposition, That if Money

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bore *5 l. per Cent.* 105 *l.* to be receiv'd at the Year's end would now be worth 100 *l.*

But Spiritual and Collegiate-Persons have never come up any thing near to this Value. --- Of late Years some of them have taken 1 Year and  $\frac{1}{2}$  of the *reputed* Rent for renewing of 7 Years laps'd in a Lease of 21 Years; and so in proportion for putting in a Life into a Lease for Lives: And some of them do still, as they all, within our own Memory, did usually take but 1 Year for such a *Renewal*. What Reason then can Church and College-Lessees have to complain against their Lessors, since they do not in their highest *Fines* take so much as half of the real Value?

As to those Disputes that may have arisen concerning the Value of some particular Estates, upon Surveys lately made, no Objection can in Justice be brought from them against what  
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I have advanc'd; because those Disputes are not concerning the Rate of *Fining*, but concerning the different Valuation of the Estates; and 'till *this* can be settled, no Argument can be drawn from hence in favour of either Side.

And I desire the Reader would observe here, That Spiritual and Collegiate-Persons have rais'd their *Fines* only in *Specie*, but not in *real Value*. For to grant a Lease of Land for any Term of Years, is to grant away the *Fee* for so long. And therefore as the *real Value* of the whole *Fee* increases, the *real Value* of the Part granted upon Lease will also increase in proportion. But Spiritual and Collegiate-Persons have not rais'd the *Value* of their *Fines*, for the Parts which they have granted upon Lease, in proportion to the advanc'd *real Value* of the *Fee* of their Estates. --- For instance, When Money was at *6 l. per Cent.* *Free Land* was worth  
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17 Years Purchase; as it is worth 25 Years Purchase *now* that Money is at 4 *l.* *per Cent.* and the usual Rate of *Church* and *College-Fines* *then* was 1 Year's Rent for 7 Years laps'd. But 1 Year's Rent *then* was the 17th Part of the *real Value* of the whole *Fee*, whereas 1 Year's and  $\frac{1}{4}$  Rent *now* is but the 20th Part of the *real Value* of the whole *Fee*; and consequently the *present Church* and *College Fines* of 1 Year and  $\frac{1}{4}$  are as much less than the *former Fines* of only 1 Year, as  $\frac{1}{20}$  is less than  $\frac{1}{17}$ .

The same Truth will also appear if we compare these different *Fines*, for the like Term of 7 Years, with the different *Values* of a Lease of 21 Years in the beginning of the last Century, and at present. ---- \* In the beginning of the last Century Money bore 10 *per Cent.* and according-

\* *The Interest of Money was reduced to 10 per Cent. by 13 Eliz. and to 8 per Cent. by 21 Jac. I.*

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ly a Lease of 21 Years was *then* worth almost 9 Years Purchase. So that a *Fine* of 1 Year's Rent, for renewing of 7 Years laps'd in such a Lease, was *then* worth about a 9th Part of the Value of the whole Lease. But *now* that a Lease of 21 Years is worth, by the *present* Rate of Interest, 14 Years Purchase, a *Fine* of one Year and  $\frac{1}{4}$ , for renewing of 7 Years laps'd, is worth but an 11th Part of the Value of the whole Lease.

Both these Computations agree in the same Point. And they, not only show the Reason why *Spiritual* and *Collegiate-Persons* have rais'd, and should raise their *Fines*; but they are also a Demonstration that *Church* and *College-Lessees* are more favourably us'd in paying 1 Year's and  $\frac{1}{4}$  Rent for a *Renewal* of 7 Years *now* that Land is worth 25 Years Purchase, than they were when they paid only 1 Year's Rent for a *Renewal*

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of a like Term, and Land was worth  
17 Years Purchase.

II. A second Consideration which shows the Unreasonableness of the present Complaints of Church and College-Lessees is ; that Lay Lords have always taken greater *Fines* for renewing of the Leases held of them, both for Lives and for Years, than Spiritual and Collegiate-Persons have ever taken of their Tenants, and yet in the former Case there have been no *such* Complaints, altho' the Point in Equity, *i. e.* the *real Value* of the Thing, is in both Cases exactly the same.

We have already taken a general View of the intrinsic Value of those Leases, about which we are now concern'd, and of the usual *Renewals* of them.---I don't say, that either Lay-men or Church-men have *fin'd* their Tenants up to the intrinsic Value; but I must say, that Lay-men have always come nearer to the intrinsic  
Value

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Value than Church-men. And, I believe, I may safely lay this down as a sure Position, that when Church-Lessors have usually taken 1 Year's *reputed* Rent for renewing of seven Years laps'd in a Lease of 21 Years, and 1 Year's and  $\frac{1}{4}$  Rent for putting a Life into a Lease of Lives, Lay-Lessors have, as usually, taken the Rack-Rent of two Years for the *former*, and something more for the *latter*. And tho' Church-men have, of late Years, somewhat increas'd their *Fines*, yet they still are at much the same proportionable Distance from the usual Method of *fining*, which Lay-men observe one with another. Church and College-Lessees therefore will find no reason to complain of hard Usage from their Lessors, if they will but compare the Terms upon which they renew with those Terms upon which Lay-Lessees renew with their Lessors.---It is indeed the usual Way of most Tenants  
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of all Kinds to complain against their Land-Lords. But where Complaints are great and loud one expects to find some particular and very reasonable Grounds for them. But this is so far from appearing to be the Case of Church and College-Lessees, that it will, upon Enquiry, be found, that they have great Reason to be thankful that they are us'd by their Lessors much more favourably than Lay-Lessees are by their Lessors.

III. A third Consideration which shews the Unreasonableness of the present Complaints of Church and College-Lessees is ; that, generally speaking, Church-men and Fellows of Colleges cannot in such Cases do any thing that is unjust to their Lessees. For they cannot alter the Bargains, which they or their Predecessors have made with them.----If the Lessees hold by Lives it is not in the Power of the Lessors to enter upon the  
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the Premises till the Lives are expir'd ; and if they hold by a Lease of Years, not till those Years are run out. But if the Lessees have a mind to renew when a Life is fallen, or 7 Years are expir'd, *this* is entering into a new Covenant, which, in the Nature of things, is as distinct from the former Covenant as if they had never held under the aforesaid Lessors ; and consequently both Parties are free to make the most of their respective Interests in the Estates. For after all that can be said, it must be allow'd that Spiritual and Collegiate-Persons have in Right and Reason the same real Interest in their Estates for the Time being that Lay-Lessors, who are Tenants only for Life, have in theirs.----There cannot possibly be imagin'd any Difference in Nature between *Church-Property* and *Lay-Property* of this Kind. An Estate of 100 *l. per Annum* is not worth so much to a Lay-man during his  
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his Life, and lets to a Church-man during his Life. And therefore when such an Estate falls into the Hands of Spiritual or Collegiate-Persons, they must have the same Right that Lay-Lessors, who hold by the same Kind of Tenure, have, either to keep it in Hand, or let it out by the Year at the same yearly Rent, or upon a Lease of Lives or Years, for as many Years Purchase.

This Consideration is to be understood, as it is worded, only generally. It is possible that in some few and very rare Cases both Lay and Church Lessees may suffer Hardships. But tho' such Cases are Objections against an universal Proposition, they can be no Objection against a general One. And much less do they afford just Grounds to lay the whole Load of Complaint on the Clergy; since both Lay and Church Lessees are equally liable to the same possible Grievances. And besides, I am  
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apt to think, because I have known it in many Cases to be Fact, that the greatest Part of these are only pretended Hardships.--- The Case refers to Improvements made by the Lessee on the Premises.--- Now as to Buildings, the common Method of Churches and Colleges to encourage such Improvements is to take an easy Ground-Rent, and wholly to remit the *Fine* for the first *Renewal*. By which Means Building is encourag'd, and Builders find that building on Church or College-Ground turns to much better Account than building on Lay-Premises.----- As to Improvements of Land by Husbandry, the usual Method is for Church and College-Lessees to propose to their Lessors what Improvements they intend to make, and to secure a proportionable Allowance or Abatement for such Improvements, either before they begin to make them, or at their next *Renewal*.  
And

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And there is no doubt but such Promises, when made, ought to be religiously observ'd. But 'tis evident that this Case is liable to unfair Practices on both Sides. For as Churches and Colleges are flux Bodies, the *Major* Part of the Members of them may possibly be chang'd before the next *Renewal*; and then the new Members may possibly not be willing to make good the Promise of their Predecessors; or, which oftner happens, after such Changes the Lessees are apt to conceal the Allowances and Abatements which they have already receiv'd, and to plead for new Allowances and Abatements, under Pretence that they have made Improvements upon the Premises without any Considerations had or receiv'd from the Lessors. ----- However, in all common and general Cases, it is most evident that Church Lessors and Lessees have both of them their Remedy in their own Hands.

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Hands. And so whether the Informations given of the *Value* of Estates be good or bad; whether right or wrong *Surveys* have been made, neither Party can be aggriev'd; since if they cannot concur and agree upon a new Bargain, they may nevertheless enjoy all the Advantages of their former Agreement.

The foregoing Proposition being, as I conceive, fully prov'd, I shall now draw three very important Corollaries from it: only premising, That as the *Fines* for *Renewals* and the Interest of Money have varied much of late Years, and there are very few Church-Lessees, but what were so when *Fines* were more settled, and Money was at *6 l. per Cent.* I shall use this Rate of Interest to make good the following Corollaries.

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C O R O L. I.

Those that have Church-Leases of 21 Years, and have been Church-Lessees for 29 Years have, within that Time, got clearly out of the Church-Estates Money enough to purchase their own Leases.

Suppose a Church-Lessee to have purchas'd a 21 Years Lease of a Church-Estate of 100 *l.* per *Annum* for 1200 *l.* and to have paid a *Fine* of 100 *l.* for every *Renewal* of 7 Years; it is evident that upon every such *Renewal* he got 140 *l.* For the Value of a *Renewal* of 7 Years is, in such a Case, to the Value of the whole Lease as 1 is to 5. If then the Money got upon every such *Renewal*, and the Interest of this Money be put together, it will appear by the Calculation annext that in 29 Years the Lessee gets clearly out of the Estate

Estate Money enough to purchase his own Lease.

	1.
<i>First</i> 7 Years Renewal	140
	<hr/>
<i>Second</i> 7 Years Renewal	140
140 <i>l.</i> become by Interest of 7 Years	210
	<hr/>
	350
	<hr/>
<i>Third</i> 7 Years Renewal	140
350 <i>l.</i> become by Interest of 7 Years	525
	<hr/>
	665
	<hr/>
<i>Fourth</i> 7 Years Renewal	140
665 <i>l.</i> become by Interest of 7 Years	997
	<hr/>
	1137
	<hr/>

C O R O L. II.

Those that have Church-Leases of 21 Years, and have been Lessees for 34 Years, have, within that Time, got clearly out of the Church-Estates Money enough to purchase the *Fee-Simple* of them.

A *Free Estate* of 100 *l. per Annum*, Money being at the Rate of 6 *per Cent.* is worth 16 Years and  $\frac{2}{3}$  Purchase. Now if we carry on the foregoing Calculation, it will appear that in four *Renewals* of 7 Years, and one of 6 Years, the Lessee gets clear 1711 *l.* which will purchase a *Free Estate* of 100 *l. per Annum*; the Interest of Money being as before.

Fifth Renewal of 6 Years	120
1137 become by Interest of 6 Years	1591
	1711
	CO-

C O R O L. III.

Those that have Church-Leases of 21 Years, and have been Lessees for 63 Years, or ever since the *Restoration*, have, within that Time, got clearly out of the Church-Estates Money enough to purchase each of them their own Lease, and besides a *Free-Estate* of the same yearly Value.

As this Corollary is only the Sum of the two foregoing, it does not stand in need of a distinct Proof.

The same Truths will proportionably appear in Leases for Lives, and at other Rates of Interest and *fining*. And therefore, upon the Whole, I put it to the Conscience of the *antient Tenants* of the Church to determine with themselves, whether the Violences and Oppressions that are complain'd of lie on the Side of the Church Lessors or of the Church Lessees.

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WHAT I have already said is, I presume, sufficient to prove the Proposition which I had advanc'd, but as *this* will receive farther Strength by removing the Objections that may be made against it, I shall now proceed to consider *these*, as I find them laid before me in a late Performance, Entituled: *An Enquiry into the Customary-Estates and Tenant-Rights of those who hold Lands of Church and other Foundations by the Tenure of three Lives, and twenty one Years.*

It is necessary I should premise here that what the Author of the *Enquiry* has offer'd on this Subject falls properly under the Head only of my third Consideration. For his main Design is to prove a *renewable Right* in favour of Church and College-Lessees. Whereas my third Consideration is built upon the Supposition that they have no *such* Right. But as these Things are connected together they easily run into one another.

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another. However I shall endeavour to keep them as distinct as possible.

I. The *Enquirer* begins by asserting that there is a *difference between Lay and Ecclesiastical Estates*. Page 5, 8. And he apprehends this Difference to be so great that he confesseth they seem to him *to be in no one Point and Quality alike, with respect to the Property and Interest which appertain to each.* Page 23.

The first 30 Pages of the *Enquiry* (which make almost one third part of it) are spent upon this Subject, And yet the Author has not produc'd one single Difference that comes up to the Point.----- He supposes that the Point to be prov'd is, that there is a *Difference between Lay and Ecclesiastical Estates*. But this is stating the Case in too general Terms, with no other View, that I can see, but to perplex the Cause and deceive the Reader. For the Point to

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be made out by him is not, that there is a Difference between Lay and Ecclesiastical Estates ; for that there is a Difference between them, when consider'd so generally, is a Thing which was never denied : But the true and only Point to be prov'd by him is ; *That there is such a Difference between the Tenures of Spiritual and Collegiate-Persons and those of Lay-Lessors, who are Tenants only for Life, as that the former have not the same Interest in their Estates during their Lives, that Lay-Lessors are allow'd to have during their Lives.*--- I insist upon it, that the stating of the Case in any other manner is running from the Point : And the stating of it in this manner evidently shows, that all those Particulars in which the *Enquirer* has plac'd a Difference between Lay and Ecclesiastical Estates are quite foreign to the Purpose. For they may all be allow'd to be true, and yet nothing will follow from such Concessions that

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that will any Way prove that Spiritual and Collegiate-Persons have not, for their time, as full an Interest in their Estates, as Lay-Lessors for Life have for their time.

Lay-Fees, it is said, are pure, absolute, and unconditional Estates in the Owners. --- But there is as wide a Difference between *these* and Lay-Tenants for Life, as there is between the *former* and Church-Possessors. --- Again ; it is urg'd, That Lay-Tenants come into their Estates by Purchase or Descent ; whereas Spiritual and Collegiate-Persons come in by *free Gift*. --- But Lay-Possessors, whether in *Fee*, or only for Life, do not always come into their Estates by Purchase or Descent. *These* are sometimes as *free Gifts* to them, as Church-Preferments are to Church-men. And besides, it makes no Alteration in the present Case, whether a Tenant for Life come in by *Purchase, Descent, or Free Gift*. If he comes in by a good Title (as *Purchase, Descent, and free*

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*free Gift* must be allow'd to be good Titles) he will still have for his Term the same Interest in the Estate, whether he be Church or Lay-man. It is farther said, That Tenants of Lay-Fees are unaccountable for the Profits they make of their Estates, but Spiritual and Collegiate-Persons are accountable. --- But this may be either allow'd or deny'd according to what the Author meant. If the Author meant that Spiritual and Collegiate-Persons are accountable for such a Part of the Profits of their Estates as will answer the Incumbrances laid upon them by their Founders, *this* will be allow'd; but then it may equally affect Lay-Possessors, whether in *Fee*, or only for *Life*; for their Estates may possibly be charg'd with Incumbrances, as well as those of Spiritual and Collegiate-Persons. In which Case the Lay-Possessors will be accountable to those Persons, in whose Favour the Incumbrances are laid upon their Estates.

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Estates. But if the Author meant, That after these Incumbrances are satisfied, Spiritual and Collegiate-Persons are accountable for that Share of the Profits of their Estates which comes to them, *this* will be denied. For they are as absolutely unaccountable for their respective Dividends, or Profits, as if *these* arose from pure and absolute *Fee* Estates. ---- Lastly, It is advanc'd, and as well prov'd as it is universally undenied, That Church-Lands were given to the Church on the *Special Trust* that they should be applied to the good Purposes of Charity, and the Maintenance of the Clergy. But this Design of religious Donations makes no manner of Alteration in the Tenure of Church and College-Lessors. The Uses to which the Produces of their Estates are to be applied (whether they arise from *reserved Rents*, or *Fines*) is directed by the Statutes of the respective Foundations. If they

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they are not so applied, I readily own that a Fraud is thereby committed, and the original Intent of the Donors perverted. And I would farther consent to have all those Penalties inflicted on the Doers of this, which the Law directs. But what is all this to the Tenure of Church and College-Lessors? Or what Advantage does it make out for the Lessees? whose Condition in this respect remains the same, whether the Trust repos'd in the Lessors by the Donors, be conscientiously discharg'd by them, or not.

And here I think my self dispens'd from following the *Enquirer* thro' that *short View* which he takes of the *Original Nature, Trust and Design of Donations to the Church*, and which in twenty Pages, and no more, he deduces from *Constantine*, thro' the *Council of Trent*, down to *Queen Elizabeth*. We are agreed upon the Truth of these Facts, and differ only

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ly about the Applications of and Consequences from them, which, with some Men, are very slight things. I think the *Enquirer* might have spar'd himself the trouble of making Collections, which could serve no other Purpose but to fill twenty Pages. But perhaps this Trouble was already over, and the Collections lay ready in the Common-Place Book. If the Case was so, we need not ask the Reason why the *Enquirer* \* declares he *could not avoid saying thus much*. --- But, as I propose to put the Reader to as little Expence as possible, I must proceed to consider that Part of the *Enquiry* that carries some Argument with it, and conclude the present Head with this Determination, *viz.* That the *Enquirer* has not made out any such Difference between Lay and Ecclesiastical Estates as comes up to the Point,

\* Page 24.

and



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and consequently, That he has not prov'd his Preliminary Position.

II. From that Part of the *Enquiry* which has been already consider'd, an Objection may be form'd against what I have asserted concerning the Unreasonableness of the Complaints that are rais'd against the *Fines* set by Spiritual and Collegiate-Persons. For it may be said, That since the Estates which they enjoy are religious *Donations*, and the Intent of the *Donors* was, that their Endowments should be applied to charitable Uses, Church-men and Fellows of Colleges ought to be more easy with their Tenants than Lay-Lessors are with theirs.

This Objection consists of two Particulars: And

I. With relation to the first, *viz.* The Supposition that Spiritual and Collegiate-Persons are not so easy with

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with their Tenants as Lay-Lessors are with theirs, I confidently assert, because I think I have sufficiently prov'd it, that the Fact is and has been quite otherwise ever since the time when Money bore 10 *per Cent.* and it never was more evident than it has been of late Years, that Spiritual and Collegiate-Lessors are more easy with their Tenants than Lay-Lessors are with theirs, when yet the popular Cry against them has been greatest. For my own Part, I cannot help thinking that a principal Cause of the Clamours that have been rais'd against Church-men proceeds from their having renew'd with their Tenants upon very easy Terms, and not having kept up with Lay-Lessors in the Rate of *Fining*, which *these* observe. It is certain that Men may be good Scholars, and good Christians, and so good Church-men, without being deeply skill'd in Numbers and Calculations, and without knowing

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knowing the real Value of *Leases* and of the *Renewals* of them. Now the Lessees under them, observing this, have made it a Practice upon *Renewals*, to exclaim against the Exorbitancy of the *Fines* demanded; not that they really thought them so, but in hopes of obtaining by Noise and Clamour, what they well knew they had no reason to expect in Justice and Equity.

2. As to the Second Particular in the Objection, *viz.* That Spiritual and Collegiate-Lessors ought to be more easy with their Tenants than Lay-Lessors are with theirs, because the Intent of the religious *Donors* was, that their Endowments should be applied to charitable Uses, I answer---- That the Application of Church-Revenues is entirely distinct from the manner in which those Revenues are rais'd. There is no doubt but that Church-Revenues ought to be

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be applied to their proper Uses. But this Application is a Matter which is cognizable to the Visitor, or Ordinary, and not to the Lessee; as, on the other hand, the Lessee, and not the Visitor, or Ordinary, is the sole Judge whether it be worth his while to renew upon a *Fine* set or not.---- Besides, whatever charitable Designs religious *Donors* had in view, 'tis certain *those* cannot be answer'd, unless Church-men receive the Revenues which the *Donors* left for this Purpose. And it cannot be said that Church-men receive the Revenues which the *Donors* left, if they are not allow'd to make the same Advantages of their Estates that Lay-Lessors do of theirs. For religious *Donors* intended no such Distinction.---- And further still, whatever charitable Intentions religious *Donors* can be suppos'd to have had, the present Church-Lessees have no reason to think themselves the proper and principal

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cipal Objects of their Charity. For most Church-Leases have now got into the Hands of Persons, who, generally speaking, are richer than the Church-men under whom they hold, and so more able to consider Church-men as Objects of their Charity, than the Reverse. --- So that religious Endowments cannot be applied more contrary to the original Design of the *Donors*, than by alienating any Part of the Value of them, and appropriating *this* to the Lessees.

III. We are now come to the grand Position of the *Enquiry*, viz.

*That the Lessees of Lands holden of the Church by the Tenure of 3 Lives or 21 Years, and their Assigns, have, by the Laws and Usages of this Realm, a Right to renew their Leases at the usual Time of Renewal, on Payment of a reasonable Fine.*

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In this indeed the Merit of the Cause does consist. And this is what the *Enquirer* pursues from *Pag. 30.* to *Pag. 69.*

If the Reader is pleas'd to take up with the bare Authority, or rather Sound of great Names, he will be here fully satisfied. For in every Page he will meet with *Bracton*, or *Spelman*, or *Coke*, or *Littleton*, or some other Worthy. For my own Part, I profess to have as great Respect for these Names, as they are the Names of Men of great Sense, as the *Enquirer* himself has. But I am very sensible that the Writings of Men of the greatest Sense may be so applied as that they shall have no Sense. --- The *Enquirer* had undoubtedly made large Collections under the Words *Custom*, *Copy*, and *Feud*; and for this reason he could no more avoid saying *thus much* under this Head, than under a former Head he could avoid filling 20 Pages with a

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*short*

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*short View of the original Nature, Trust and Design of Donations to the Church, which was nothing to the Purpose. However, since the Enquirer intended to exhaust his Common-Place Book, I wish he had disposed his Collections into such an Order as would have given his Reader a distinct View of his Arguments: for in their present State they lie more confus'd than they probably did in their original Archive. But for the Reader's sake I will endeavour to separate them, and keep them as distinct as possible. And the best Method I can think of to dispose what the Enquirer has advanc'd, to his Advantage, is thus, viz.*

That the Lessees of Lands holden of the Church by the Tenure of 3 Lives or 21 Years, have a *Right* to renew their Leases.

I. Because *long Possession* implies *Right*.

II. Because

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II. Because a *Renewal* is a *Renewal of Possession*.

III. Because *Custom* carries a *renewable Right*.

IV. Because the *Law* gives them this *Right*.

I. It is said, That Church-Lessees have a *Right of Renewing*, (a) because *long Possession* implies *Right*. --- The ancient, acknowledg'd and common Customs of the Realm are indeed the Common Law of the Realm; and (b) *Bracton* very justly says, that *Longa Possessio parit jus possidendi*. But *Bracton's Longa Possessio* is not a *Possession* of 21 Years, or of 3 joint Lives, but as (c) he himself, and (d) *Littleton* after him explains it, such as goes *beyond the Memory of Man*. For such a length of Time ought,

(a) Pag. 31. &c.

(b) Lib. 1. c. 3.

(c) Longum Tempus, & longus Usus qui excedit Memoriam hominum, sufficit pro Jure. *Ibid.*

(d) Ten. S. 170.

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as the (a) *Civilians* speak, to be held for *infinite*.

II. It is said, That Church-Lessees have a Right of Renewing, because (b) a *Renewal* is a *Renewal of Possession*. --- But to this I answer, That a *Renewal* is a repurchasing or reacquiring of a *Possession*, which would otherwise have expired. This is what the Word *Renewal* properly and strictly means. And this is the Sense also in which the Law understands it: for *Renovatio Possessionis* does strictly give the Tenant no more *Right of Possession* than he enjoy'd before his former Term was expired. And therefore it cannot, as the *Enquirer* would have it, signify in general, to *purchase, continue and perpetuate a successive Possession in the Lands*; for where the first *Possession* was not a

(a) Tempus Memoriam excedens pro infinito habetur. Grot. de Jure B. atque P.

(b) Pag. 70. &c.

*perpetual*

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*perpetual and successive Possession*, the renewing of *this* cannot thereby become *perpetual and successive*. --- And this is the common Case of Church and College-Lessees. Their present Tenure does not imply or give them any Right to *continue and perpetuate* their *Possession*, and therefore their future *Renovation or Renewal* of the same Tenure can never give them such a Right. --- A Power of renewing is a very considerable Advantage on the side of the Lessee, and therefore never to be understood to be granted, unless it be express'd in the Terms of the Covenant, or annex'd to the Nature of the Tenure, in virtue of some plain Law.

III. It is said, That Church-Lessees have a Right of renewing, because *Custom* carries a *renewable Right*.

This Topick is pursued from Page 31 to Page 43, and from Page 55 to Page 60, &c. --- But, before I

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speak

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Speak concerning the Force of *Custom*, it is necessary I should observe, That the *Enquirer*, in some of the Pages here refer'd to, viz. Pag 34 -- 49, endeavours to perplex the Cause, to confound Copyholds and Leaseholds, and make his Reader believe that the customary Leases held of Spiritual Persons are the same with Tenures by *Copy*. Whereas it is very evident they are not. Both these kinds of Tenure remain entirely distinct in the Hands of all Lords. And it may with as much Truth be said, that Copyholds are free Estates, as that Leaseholds are Copyholds. --- I should be very unwilling to impute to an Author any Design which does not evidently appear from what he has advanc'd; but in the present Case I cannot but say, that I take this to have been his Design, because I do not see that he could have any other, and because he again endeavours to lead his Reader into the same

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same Confusion, Page 64, 5. where he says that Church-Leases are "compar'd to, and spoken of by learned Writers as of Copyholds, and in the Law of *England*, there is now no difference between them in this respect; that in pleading or making Title both the Copyhold and the Leasehold Title are, and always may be alledg'd as Grants, and at this Day have divers other Properties in common. But,

Because Copyholds and Leaseholds have divers *other* Properties in common, does it therefore follow that they have the Property of a *renewable Right* in common?

Because they are compar'd to, and spoken of by learned Writers *as* of Copyholds, are they *therefore* Copyholds?

Because Copyhold and Leasehold Titles may be alledg'd as Grants, do therefore the *same* Rights and Privileges

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leges go with, and belong to *all* Grants?

I presume the *Enquirer* will not answer affirmatively to any of these Queries when they are thus distinctly put to him.

Father *Simon*, and others, may have compar'd the Customary Leases held of Spiritual Persons to Tenures by *Copy*. But he never intended to mean thereby that they were *one* and the *same* Kind of Tenure, any more than \* My Lord *Coke* in comparing Ecclesiastical Corporations to Tenants in Dower intended to mean that they both held by the *same* Kind of Tenure. There is as wide a Difference between *those* as the † *Enquirer* himself owns there is between *these*. The Intent of such Comparisons is only to make Things that are not understood to be apprehended, by shewing that they bear some Simili-

\* 2 Inst. 627.

† Page 9.

tude

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tude or Analogy with Things that are suppos'd to be better understood.

That there are Customary Rights belonging to Leasehold Tenures is readily allow'd; but that a *Right of renewing* is one of those Customary Rights is and will be still denied.----- All the Learning, which the Author of the *Enquiry* has produc'd upon the Subject, and Force of *Custom*, will never prove this Point. For it may be allow'd to be *all* true, and yet it will never follow from hence that Church and College-Lessees have a *renewable Right* inherent or annex to their Tenure.----- *Custom* has great Force; but not Force enough to give or support a Right in Cases to which such *Custom* does not belong. It is essentially necessary to *this* that it be known and understood by the Parties concern'd that such *Custom* does create, give, convey or maintain such and such Rights.----- The Te-

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Tenures by *Knights Service*, *Soccage* or *Copy* were founded in, and supported by *Custom*, because it was generally known and understood by the Lords and Tenants that such and such respective *Rights* and *Services* were by *Custom* inherent to Tenures by *Knights Service*, *Soccage* or *Copy*. And therefore the Lords of, and Tenants under Manors, in which any of the aforelaid *Customs* prevail'd, might plead their *respective Rights* by the Law of *Custom*. ----- But more they could not do. For tho' the Manors, in which the Tenures by *Knights Service*, *Soccage* or *Copy* prevail'd, had some *Rights* and *Services* that were general and common, yet had they also some that were proper and peculiar to particular Manors. So that these particular *Rights* and *Services* might be pleaded in those Manors in which *Custom* was known to have establish'd them, but not in those in which  
*Customs*

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*Custom* was not known to have establish'd them. Which evidently shews that tho' *Custom* has Force in Law, and does give and convey *Rights* with and by Tenures, yet this is and can be only in such Cases, as *Custom* is generally known, understood and acknowledg'd to give and convey such *Rights* with and by such Tenures.

The same may be observ'd in the Case of *Mortuaries*. These are due to the Clergy by *Custom* only; *ubi Mortuarium dari consuevit*. So the Statute *Circumspecte agatis*. So the Statute 21. H. 8. and so is the constant Course of pleading in Cases of *Mortuaries*: Claim being always laid to them as due by *Custom*. The aforelaid Statute 21. H. 8. has settled the *Rate and Form* after which they are to be paid. But before this Statute very different *Mortuaries* were due in different Places according to the particular *Custom* of these  
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these Places. And the Clergy could only demand them in Virtue of such particular *Custom*. ---- So that *Custom*, in order to be Law, or give a legal Right, must be a *Custom* which is known and understood to convey a *Right*.

It has been, Time out of Mind, a *Custom* for Landlords, in letting their Lands, to prefer an Old Tenant to a New one. And besides *Custom* there is also *Reason* for this. And yet it was never thought that the *Customary Preference* of an Old Tenant gave him a *Customary Right* of being continu'd: Because a *Customary Preference* was not known and understood to contain or convey such a *Right*. Now this Case is exactly parallel with that of Church and College-Lessees. It has been, Time out of Mind, a *Custom* for Church and College-Lessors to renew with their Old Lessees. But it cannot be thought that this *Customary Preference*

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*rence* of Old Lessees gives *these* a *Customary Right* of *renewing* any more than in the former Case the *Customary Preference* of Old Tenants gives *them* a *Customary Right* of being continued. And it is, and must in all Cases be universally true, that no *Custom* is a Foundation of any *Rights*, excepting in those Cases in which *Custom* is known and understood to convey such *Rights*.

I desire the Reader would take particular Notice of what I have just now said, *viz.* that the *Customary Preference* which Church-Lessors give to their Old Lessees, is exactly parallel to the *Customary Preference* which all Landlords give to their Old Tenants. For this is an Observation that will decide every thing that has or can be said in favour of the pretended *Customary renewable Right* of Church-Lessees. And that the Case really is as I have represented it, appears to a Demonstration from the

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*Concurrent* Leases which Spiritual and Collegiate-Persons have granted from Time to Time to New Lessees, when they could not agree with their Old ones.----- The Practice of granting such Leases is founded in and confirm'd by Law, and is as antient as the Tenures themselves. The Law Books of Reports have many Cases that have arisen upon the Grants of *Concurrent* Leases to New Lessees. And in none of *these*, so far as I can find, was the pretended *renewable Right* of the Old Lessees ever pleaded in Bar to the Entrance of the New ones.

If then recourse is had to *Custom* it will be found to run against the Lessees having a *renewable Right*. I leave it therefore with the Reader to judge with how little Truth the *Enquirer* has made his Conclusion on this Head, *viz.* “ That in *England*  
 “ there has been a *Custom* Time out  
 “ of Mind to grant the Temporal  
 “ Estates

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“ Estates of the Church to Tenants  
 “ by the Tenure, or for the Terms  
 “ of 3 Lives and 21 Years, and  
 “ that for all the Time aforesaid, those  
 “ Tenants, their Heirs, Representa-  
 “ tives or Assigns have been admit-  
 “ ted to renew their respective Pos-  
 “ sessions according to such Custom.

IV. And Lastly, it is said that the Law gives a *renewable Right* to Church-Lessees. They, says the *Enquirer*, and their Assigns have by the Laws of this Realm a Right to renew their Leases, Page 30. The King and Parliament have asserted their *renewable Right in Words at Length*, Page 64. By the Laws of this Realm those Tenants have a *renewable Right*, and the Grantors and their Successors are *compellable to renew*. Page 68.

When an Author has express'd himself in such determinate and strong Terms the Reader has just Reason to expect very clear and full

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Evidence. But *Montes parturiunt*, and nothing is produc'd to support this Position but some Acts and Proceedings of Parliament which only show the laudable Care it took of the Church consider'd as a successive Body, a favourable Recommendation of Sir *Thomas Woodcock* to the Bishop of *Chichester*, and certain recommendatory MSS. Orders *penes J. Spere-man Armigerum* issued to some Bishops to continue their *ancient Tenants*.

The Acts of Parliament which relate to Leases held under Spiritual and Collegiate Persons are but few. They are all very plain. And they, none of them, mention, or any Way regard the pretended *renewable Right* of the Lessees. There is no Act of Parliament in being which obliges Church-men and Fellows of Colleges to *renew* with their Old Tenants. Nay, there is no Act of Parliament that obliges them at all to let out their Estates upon Leases.----

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ses.---- The 32. H. 8. restrains only the inferior Clergy. The Archbishops and Bishops gain'd a considerable Privilege by it. For this Statute is understood to enable them to grant Leases for 3 Lives or 21 Years without Confirmation of Dean and Chapter, and to leave them their former Privilege of granting Leases for any Term with Confirmation of Dean and Chapter; as it was adjudg'd in the Case of *Fox and Collier. Moore. 107.* The 1st *Eliz.* indeed restrains Archbishops and Bishops to the same Terms of 21 Years or 3 Lives with the inferior Clergy; but it still leaves them their Privilege of granting Leases with Confirmation of Dean and Chapter in all other respects as it stood before the 32. H. 8.----- The 13th *Eliz.* is a Confirmation of the 32. H. 8. excepting that Archbishops and Bishops are not mention'd therein; and the 18th *Eliz.* rehearſes and confirms the 13th *Eliz.*

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*Eliz.* and enables the Persons therein mention'd to grant *Concurrent* Leases at the Expiration of 18 Years of the 21 Years Leases.

These are the main enabling and restraining Statutes relating to Church and College-Leases. And it is very evident that none of them lay any Obligation on Spiritual and Collegiate-Persons to *renew* with their Old Tenants, or even so much as to lease out their Estates. They only say that if Spiritual and Collegiate-Persons *do* grant out their Estates upon Leases they shall grant them out for no *longer Terms*, and upon no *other Conditions* but what are mention'd in *these* Statutes.

For my own Part, I am so far from thinking that the Law gives a *renewable Right* to Church-Lessees that I cannot but think it out of the Power of Church-men to grant Leases of their Estates with such a *Right*. Because such a Grant would be an *Assu-*

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*Assurance of a Perpetuity, a Conveyance of a Right for ever*, which is an *Alienation*. The Statutes 1 *Eliz.* c. 19. and 1 *Jac.* c. 3. are in the Letter of them express against all such *Alienations, Grants, Assurances* and *Conveyances* even to the *King* himself: And the Reason and Intent of all these Acts must, I think, take in the whole Body of the Clergy.

The first Proceeding in Parliament relating to this Subject, which the *Enquirer* \* produces, is an Application that was made in *Feb.* 1661. to the House of Commons by the Bishop of *Ely*, and *Elizabeth, Barbara* and *Frances Barker* to confirm a Lease made by the said Bishop unto the said Mrs. *Barkers* of the *King's Head Tavern* in *Chancery Lane* for the Terms of 40 Years with Covenant of their New-building the House. Upon which the House

\* Page 49.

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Ordered, That Mr. Ashburnham &c. do attend the Lord Bishop of Ely, and desire him from this House to make Mrs. Barker a Lease of the said House for 3 Lives, and that his Lordship would take Consideration of the Covenant for New-building the House, and use Mrs. Barker reasonably.

Upon this Case I beg Leave to make the following Observations.

I. That there is nothing in it either asserted or so much as hinted concerning a *renewable Right* belonging to Church-Lessees. It does not appear whether Mrs. Barkers were old or new Tenants. And nothing is laid before the House but a Bill to enable the Bishop of Ely to grant them a 40 Years Lease.

II. That the Bishop in this intended only the Advantage of Mrs. Barkers. To encourage them to build he was willing to have a Lease of

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of 40 Years granted to them. But as he could not, of himself, by the Laws then in force, grant them any other Lease then for 21 Years or 3 Lives, which is not so good a building Lease as one for 40 Years, he therefore join'd with them to obtain an enabling Act for this Purpose. And the Bishop was so far dispos'd to consider the Covenant of New-building the House as a Reason to use Mrs. Barkers reasonably, that if the Bill could have pass'd he would not have taken a greater Fine than what was esteem'd moderate even for a Lease of only 3 Lives.

III. That the House of Commons refus'd to pass the Bill, not as the *Enquirer* suggests, that they might not thereby make a Precedent that might soon grow up to the Subversion of all the customary freehold Estates holden of the Church for 3 Lives; but because it was contrary to the Laws in being,

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ing, and it is not prudent in the Legislature to make Laws upon *slight* Reasons, or repeal them without *sufficient* Reasons.---- In this the House of Commons shew'd a laudable Concern for the Good of the successive Body of the Church. And this very Instance is a *Precedent* which strongly recommends itself to all future Houses of Commons, to engage them to use that *Trust* which is repos'd in them for the Good of the Church in general, rather than for the private Advantage of Church-Lessees.

The next Proceeding in Parliament, which the *Enquirer* \* produces upon this Subject relates less to it than the former. I must therefore wholly pass over it, and proceed to consider the † Case of Sir *Thomas Woodcock*, which the *Enquirer* seems to have much at heart.

\* Page 51.

† Page 53.

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In *March* 1661, Sir *Thomas Woodcock* presented a Petition to the House of Commons, setting forth that he was interested in a Lease for 3 Lives of a Farm belonging to the Bishoprick of *Chichester*, upon which above 1000 *l.* had been laid out in Building and Improvements, and that two of the Lives in the Lease died in the Time of the War, and the third in *Feb.* 1659, and that he thereupon did make Application to the Bishop as soon as he was in a Capacity to renew the said Lease, but he refus'd so to do having granted the same to his Son. Upon which the House

Ordered, *That the Case of Sir Thomas Woodcock be recommended from this House to his Majesty's Commissioners appointed in this behalf, to treat between the Lord Bishop of Chichester and Sir Thomas Woodcock, and reconcile and settle the Difference between them if they can; if not, to report*

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*port their Opinion therein to the House: And it is also recommended to the said Bishop from this House to renew the Lease of the Farm in question to Sir Thomas Woodcock, at a moderate Fine, according to ancient Use.* Upon this Case, I beg Leave to make the following Observations.

I. That it relates to a Time which was attended by very particular Circumstances, and therefore ought not to be made general, and applied to Times which are not attended by any such particular Circumstances. Many honest and worthy Church-Lessees had run out their Leases, spent their Estates, and lost their Lives in the Service of the King; and therefore upon the *Restoration* it was highly proper and just for the King and Parliament to interpose and obtain for them, or their Representatives such Relief as the Circumstances of their respective Cases requir'd.-----

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The Cause was publick; and as such it call'd for a publick Consideration.----- But if Men, who have their Remedy in their own Hands, and can do themselves Justice, will nevertheless make their private Differences the Subject of publick Complaint, we must never hope to see quiet Days.----- Society will become a State of War, and our Confusions will be as endless as our Passions are great.

II. If the Church-Lessee had a *renewable Right*, here was a most favourable Opportunity for Sir *Thomas Woodcock* to plead it, and for the Parliament to assert it.----- But not one Word of this is mention'd throughout the whole Proceeding. Which profound Silence is to me a Demonstration that Sir *Thomas Woodcock* was conscious that a Church-Lessee could plead no such Right, and the Parliament, that they could not

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not assert it. On the contrary, Recourse is had to the amicable Way of *Recommendation* and *Treaty*.----- The Case of Sir *Thomas* is recommended by the House to his Majesty's Commissioners then specially appointed for such Purposes, to treat between the Lord Bishop of *Chichester* and Sir *Thomas*, and it is also recommended to the said Bishop from the House to renew the Lease, &c.----- This is the true State of Sir *Thomas Woodcock's* Case as it stands upon the Face of the *Order*. And I am not at all concern'd to know what Answer was made to the *Recommendation* of the House of Commons.----- I presume with the *Enquirer* that a satisfactory Answer was given. But whether this was affirmative or negative, still the Parliament's recommending to the Bishop to renew was not obliging him to renew: Which was the only Point the *Enquirer* had undertaken to prove, and the only Pur-

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Purpose for which the Case of Sir *Thomas Woodcock* was alledg'd.

The last kind of Proceedings \* produc'd by the *Enquirer* on this Subject is the *recommendatory MSS. Orders* that were issued (by the King and Council I suppose) to certain Bishops to continue their ancient Tenants, their Heirs and Representatives in their Estates, upon the usual and customary Terms, not to advance their Fines, and to use them moderately.

As this Proceeding is of the same Nature with the foregoing, it will therefore require but a short Answer.----- I could wish indeed that the *Enquirer* had produc'd his Friends *MSS. Orders* at length, that we might have seen the full Import of them.--- It is plain he has suppress'd the *Preamble* of them, which, no doubt, rehears'd the Grievances of the Complainants, and also the *Verb* in which

\* Page 55.

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the Energy and Force of an *Order* does consist. ---- However the *Order* produc'd, as it stands in his own Representation of it, contains sufficient Evidence to prove the Reverse of what is intended to be prov'd by it. For

If the *antient Tenants* or their Representatives, mention'd in the *Order*, had had a *renewable Right*, *this* might have been pleaded in the Courts of Judicature, without having Recourse to any *Orders*: Which very Recourse is a Proof that those Tenants, in favour of whom the *Order* is produc'd, were conscious they had no such *renewable Right*. Nay, the *Orders* themselves being, by the *Enquirers* own Representation of them, only *recommendatory*, this manifestly shews that those who issued them, *i. e.* the King and Council, were also sensible that tho' there might be *Reason* to *recommend* the *antient Tenants* to the Lessors, yet there

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was no *Law* in being to *compel these* to renew.

I have now gone through all the Evidence which the *Enquirer* has produc'd to make good the pretended *renewable Right* of Church-Lessees. And by what I have said I trust the Reader will conclude that, for any thing which the *Enquirer* has advanc'd, *Church-Lessees* and their *Assigns* have not by the *Laws* of this *Realm* a *Right* to renew their *Leases*. ---- That *the King* and *Parliament* have not asserted their *renewable Right* in *Words* at *Length*, or in any *Words*. ---- And that by the *Laws* of this *Realm*, neither the *Grantors* nor their *Successors* are *compellable* to renew. ---- And tho' the *Enquirer* has advanc'd the contrary Assertions with great Confidence, and has made a Shew of great Authorities, yet I am apt to think he was conscious that the Evidence given did not answer the Demands of the Cause, and that his

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Arguments did not make good his Premises. For after all his Contention for the *Certainty* of the Fact, he concludes only for the *Possibility* of it. " All I contend for, \* says he, " is that if the Ecclesiastical Tenants " by *Copy*, have acquir'd by *Usage* " and *Length* of Time a *renewable* " *Right* on Descent or Surrenders, " besides many other Advantages, " the *same* Usage and Length of " Time may give to the other Tenants by Lease a *renewable Right* " only."---- But such Evasions are no ways to be allow'd. There will be no End of disputing if Disputants are allow'd to set out with one Position, and to conclude with another. ---- In such Cases a Reader cannot but think himself impos'd upon and injur'd. And the *Enquirer* may be assur'd that Light and Darknes are not more distinct from one another

\* Page 64.

than

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than this Assertion, *that a thing certainly is, is from this other that it may possibly be.*

I shall not now follow the *Enquirer* any farther. ---- The main Point about which I am concern'd is now over. And if there is any Truth in what I have already said, it is needless to consider *whether Fines ought to be impos'd or assess'd by those that are interested therein or not*, and much more needless is it to offer *Considerations to settle Church-Fines.* ---- In all other Affairs of Life of the like Nature Men are allow'd to know their own Interest and the Way of the World well enough, not to part with their Money without receiving what they esteem an Equivalent in return. And it would, in my Opinion, be as improper for the Legislature to settle Church-Fines upon an invariable footing, as it would be to settle what Rents common Tenants should for ever pay to their Land-  
F Lords.

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Lords. For there is no Reason to fear, but that Church-men and Fellows of Colleges will always be ready to accept of reasonable Fines. Their Interest leads them to this, and the Nature of their Tenure (which is only for Life) places the greatest Danger and Loss of not renewing on their Side.

But there are some Things, relating to the Clergy in general, dispers'd thro' the *Enquiry*, which the great Value I have for the Author forces me to take notice of: Not indeed to answer them, but only to express my sincere Wish that they had never fallen from his Pen. \* I refer to them in the Margin; and am so far from intending to transcribe them that, were it possible to be done, I should take as much Pleasure in striking them out of the *Enquiry* as the Reader will perhaps

\* Page 3, 4, 7, 57, 69. &amp;c.

think

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think the Author took in putting them in. ----- This indeed is writing with a *free Pen* and a *free Tongue*. But 'tis not enough barely to write with a *free Pen* and a *free Tongue*, as this Author \* professes to do. The principal Thing that makes a good Writer is a *free Mind*; which if the *Enquirer* had had, I am persuaded he would not have represented the whole Body of the Clergy in so disadvantageous a Light. ----- *Free Things* are easily said and easily written: But the great Difficulty in Controversy is to keep ones *Temper*. ----- Few or no Readers can be so favourable to the Author as to think that his *free Representations* of the Clergy proceed from that † *pure Affection to the Church and its Orders* which he professes to entertain. For my own Part, if I really thought there was any thing of Argument in all this I

\* Page 5.

† Page 107.

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would

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would endeavour to give a just Answer to it. But as I take it to be only *Lay Declamation* upon a common Topick I shall answer it by nothing but Silence. For every intelligent Reader will easily distinguish between *Passion* and *Argument*, and all Men know by Experience that *Heat* will not allay *Heat*.

But I suppose the *Enquirer*, both for his own Sake, and the Credit of that Cause which he has undertaken to support, would have it thought that the Strength of his Performance consists in the argumentative, and not in the declamatory Part of it. And if so, I am ready to join Issue with him upon the Strength of the Arguments which he has advanc'd, and dare, with Confidence of Success, refer the Cause of Church-Lessors to the Determination of such Readers as are not Church-Lessees, or such Church-Lessees as are not angry against their Lessors. For these,

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these, and these only are competent Judges in an Affair of this Nature. And they, I am persuaded, will, upon Examination, find that all those Murmurings and Complaints, that are said to run thro' the Kingdom against the strict and rigorous Proceedings of Church-men with their Tenants, are rais'd by such of their Tenants only as cannot bring them down to their own low Terms, and so would endeavour to obtain by Noise and Clamour what they are conscious they cannot by Right and Reason.

Lay-men have no Reason to envy Spiritual and Collegiate-Persons.--- What Prospect can Church-men and Fellows of Colleges have of growing rich?----- Dignitaries, generally speaking, have but very moderate Shares of the Profits of their Estates to bring Home and spend in their Families, after the necessary Repairs and Service of their Churches are paid,

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paid, the Pensions and Alms which their Statutes oblige them to are discharg'd, and the Expences of Residence are satisfied. --- And as to Fellows of Colleges, unless they are Senior Fellows of great Colleges, who are but few in Number, I do aver, upon my own Knowledge, that, as Things now stand, none of them can decently subsist upon the bare Income of their Fellowships, but are forc'd to make out a Subsistence by taking Pupils, or serving neighbouring Curacies.

Church and College-Lessees have all manner of Reason to be contented and easy under their present Tenure. Their Condition is not hard in any respect. They have purchas'd for a Term; and within *this* Term they cannot be molested by their Lessors. --- But to say that they have purchas'd a *Right of renewing*, and that they are, at the same Time, entirely in the Hands of their Lessors,

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as to what Fines they shall pay, this indeed is *making* their Condition hard.

If any, it is the Clergy, that have reason to complain, and think themselves hardly dealt with. For let them act either Way, they are sure of meeting with Reproaches. --- If in Justice to themselves and Families they advance their *Fines* moderately, still keeping far beneath the *real Value*, then they are accus'd by their Lessees of *Violence* and *Oppression*. But if in Charity and Compassion to their Tenants they keep to the old low *Fines*, then they are accus'd by understanding and disinterested Men of preferring their *private Interest* to the *Good* of their *Society*, and granting away the *Right* of their *Successors* for almost nothing.

The World has always lov'd Noise. --- This is the common Spring that leads or rather misleads the greatest Part of Mankind. --- I wish to God

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we could once be brought to love Sense ; and then all Noise would cease, and all our Differences would be easily and amicably terminated.--- We ought to be very unwilling, because it would be a Reproach to us, to think that the Representatives of the Nation in Parliament want either Sense or Honesty. Let then the Charges of Violence, of Exorbitancy and of Oppression that may be laid against any Order of Men be ever so great, it is still to be hop'd that our Legislators will distinguish between real and pretended Injuries, and that, as their *Sense* will lead them to discover *Truth*, so their *Honesty* will direct them to follow *Justice*.

The Vigilancy of the Legislature has hitherto exerted itself in restraining Church-men from granting long Leases for their own Good, consider'd as a *successive Body*. But the ascertaining of *Fines*, and allowing a *renewable Right* to Church-Lessees

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is to take away from them what they have hitherto enjoy'd by a long Possession, to give it to the Lay-Tenants, contrary to the Intent of the Donors, contrary to Law, and contrary to Reason.

In Matters of Property all Distinction of Orders ought to be laid aside in Civil Society. --- There is no one Advantage of this Kind but what one Subject ought to enjoy in common with all other Subjects. This is agreeable to Reason and Equity. And as this is the Foundation upon which our present Constitution and Happiness subsist, it is hop'd that none will ever attempt to alter it. --- Sure I am that such an Attempt would be very prejudicial to the common National Interest ; since it would affect, not only the present Dignitaries of the Church, but all those also that have Hopes of becoming such, *i. e.* the whole Body of the Clergy, not only the present

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Members of Colleges but the State of Learning itself, which is preserv'd in a flourishing Condition by those Endowments, which both Lay and Spiritual Benefactors have bestow'd upon Colleges. ----- And as long as we have an *establish'd Religion*, this must be supported by an establish'd competent Maintenance for the Ministers of it. And as Matters now stand, it cannot well be conceiv'd, how any Maintenance less than the present can be call'd a *competent Maintenance*. --- The Clergy cannot purchase the Necessaries or Conveniencies of Life at an easier Rate than the Laity. ----- They bear an equal Share of the common Burthen of the Nation: And besides this, there are several heavy Incumbrances peculiar to their Preferments. ----- And whatever we may think of the *Call*, upon which Clergy-men go into Orders, we shall find that if they, by being in such a State,

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State, are not, in Matters of Property, allow'd the *common Rights* of Subjects, all understanding Men will, for the Time to come, apply themselves to other Professions; and none of them will spend a good Part of their Substance in giving their Children a liberal Education, and fitting them for a Priesthood which will thenceforth become vile and contemptible. ----- Let us add to all this, that an Attempt to fix the *Fines* of Church and College-Leases at the present, or at any unvaried Rate, can never be more unadvisable than in the present Juncture, when the lower'd Interest of Money, and the advanc'd Price of Land make it most evident, that such a Stint would be very unreasonable.

F I N I S.

