

A
COLLECTION
OF
D E C R E E S
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
FROM
THE USURPATION TO THE PRESENT TIME.

CAREFULLY EXTRACTED FROM.
THE BOOKS OF DECREES AND ORDERS
OF
THE COURT OF EXCHEQUER

(By the Permission of the Court),

AND ARRANGED IN CHRONOLOGICAL ORDER. WITH TABLES OF THE
NAMES OF THE CASES, AND THE CONTENTS.

BY
HUTTON WOOD,

ONE OF THE SIX CLERKS OF THE COURT OF EXCHEQUER.

IN FOUR VOLUMES.
VOLUME THE FOURTH.

London :
PRINTED BY BUNNEY, AND CO.
FOR THE AUTHOR,
AND FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW.

1799.

The Court also ordered the deputy to tax the said plaintiffs their costs at law, but no costs in equity on either side; the costs of reference to be reserved until after the account should be taken.

MACDONALD, *Chief Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

LEAD
STAWELL
against
ATHENS.

LYGON and Another *against* STRUTT and Others.

TRIN. TERM,
35. GEO. 3.

Derbyshire, 11th July 1795.

THE bill stated, that the plaintiff *W. Lygon* was the improprator or rector of the parish of *Duffield*, in the county of *Derby*; that within the said rectory or parish there were several townships, districts, villages, hamlets, and liberties, particularly the several townships and liberties of *Duffield*, *Belper*, *Harlewood*, and *Makeney*; that before the inclosure and division which had lately taken place under or in pursuance of a certain act of parliament, there were certain commons or waste lands within the said parish commonly called *Belper Ward* (a) and *Chevin Ward*, and certain waste lands within the said liberties of *Duffield*, *Belper*, *Harlewood*, and *Makeney*, containing one thousand five hundred acres; that on the said commons and waste lands called *Belper Ward*, the several owners or occupiers of houses and lands therein, before such inclosure took place, always had and enjoyed a *right of common* for sheep and other commonable cattle, in respect of their several houses, lands, or ground within such township; that on the other commons or wastes called *Chevin Ward*, the several owners and occupiers of houses and lands within said townships and liberties of *Duffield*, *Harlewood*, and *Makeney*, before such inclosures, always had or enjoyed a *right of common* for sheep and other commonable cattle, in respect of the several houses, lands, or grounds within the said several town-

The plaintiff, as improprator of *Duffield*, in *Derbyshire*, states, that there were two commons called *Belper Ward* and *Chevin Ward* in the parish; and also extensive waste lands in the hamlets of *Duffield*, *Belper*, *Harlewood*, and *Makeney*; that the occupiers of lands in the hamlet of *Belper* had a *right of common* on *Belper Ward*; that the occupiers of lands in the hamlets of *Duffield*, *Harlewood*, and *Makeney*, have a *right of common* on *Chevin Ward*.

(a) *Lygon*, the present improprator of *Duffield*, and his lessees of the rectory, filed a bill in this court against *Mills*, an occupier of lands called *Whitmore*, *Spencer Ward*, the *Common Grounds*, and other lands in the *Liberty of Belper*; *John Barber*, another occupier of lands in the said liberty; and *T. Davenport*, as the lessee of the crown of the tithes of the three wards called *Belper Ward*, *Chevin Ward*, and *Holland Ward*, into which the ancient forest called *Duffield Frieth*, parcel of the duchy of *Lancaster*, but then disafforested, had been divided. The defendants contended, that the said forest was extra-parochial, and that the tithes thereof, as an extra-parochial

place, belonging to the crown, had been leased by the crown to the defendant *Davenport*. The cause came on to be heard on the twenty-fourth of *January* 1744, *Hilary Term*, 18. *Geo. 2.* when the court dismissed the bill as against the attorney-general, who was made a party, and who admitted the lease to *Davenport*, and claimed the reverendary interest in the said tithes for the crown, but without costs; and the other defendants were ordered to account with and satisfy the plaintiffs for all the titheable matters and things demanded by the bill, which had arisen on the lands in their respective occupations.

ships;

LYGON AND
ANOTHER
against
STRUTT AND
OTHERS.

that the tithes arising in the hamlet of *Harlewood*, and in certain parts of the hamlet of *Belper*, belong to *T. Gifborne*; that the tithes of the hamlets of *Duffield*, *Makeney*, and the other parts of *Belper*, belong to *W. Lygon*, as impropriator of the parish; that in 1786, *Belper Ward*, *Chevin Ward*, and the waste lands, were directed to be inclosed under an act of parliament;

that certain allotments thereof were made to those persons who were entitled to rights of common thereon; that allotments were made to the defendants; that they had also purchased several of the lands which had been allotted to other occupiers;

that they had cultivated the said lands, and since the year 1790 had had several titheable matters thereon;

ships; that the plaintiff *Lygon*, as impropriator of the parish, was well entitled to the great and small tithes yearly arising therein, and in the titheable places thereof, except the tithes which had yearly arisen and become payable within those parts of the parish which lie within the said liberty of *Harlewood*, and certain parts of the liberty of *Belper*; that the said last-mentioned tithes belonged to the plaintiff *T. Gifborne*, by virtue of a grant made of such portion of tithes by some of *Lygon's* ancestors, who were impropriators of the parish; that all the said tithes had been duly paid to the plaintiffs respectively, according to their several proportions and rights therein; that about the year 1786, an act of parliament was passed, with the previous consent of all or most of the proprietors or owners of lands in the parish, having or claiming a right of common on *Belper Ward* and *Chevin Ward*, intitled, "An Act for dividing and inclosing certain Commons called *Belper Ward* and *Chevin Ward*, in the county of *Derby*, and certain Waste Lands within the Liberties of *Duffield*, *Belper*, *Harlewood*, and *Makeney*, within the Parish of *Duffield*," whereby the commissioners therein named were directed, after appropriating part of the said commons or wastes for certain purposes therein mentioned, to set out and allot the residue thereof to and amongst all and every the owners and proprietors of messuages, cottages, tofts, lands, tenements, and hereditaments, having a right and interest in such commons or waste grounds respectively, in fair and equal proportions, according to their respective rights, proportions, and interests therein; that some time after passing the act, the commissioners, or a competent part of them, proceeded to carry the purposes of the said act into execution, and in particular set out and allotted such commons and waste grounds unto and amongst the several owners of houses and lands within the aforesaid liberties; that all the defendants were, before and at the time of making such allotments, owners and occupiers of messuages, farms, and lands within the said parish; that particularly the defendants *Strutt*, *Rogers*, *Millington*, and *Linam*, had, since the passing the said act and the making such allotments, purchased or taken to farm several of such allotments of other people who were owners of land or farms in the parish, and they, and those under whom they claimed, had used and enjoyed right of common upon the said commons and waste lands so directed, allotted, and inclosed from time immemorial before the division thereof; that the said defendants had also had allotted to them by virtue of the said act, in lieu of their rights of common in respect of their several messuages, &c. and had ever since the said division been owners or occupiers of several pieces of commons and waste lands so allotted and had cultivated the same; that in the year 1790 they had grown thereon wheat, barley, oats, hay, potatoes, and other titheable matters and things, without setting out the tithe thereof, or making the plaintiffs any satisfaction for same; that they

they had fed, depastured, and kept in and upon their said allotments, during the said year, oxen, beasts, horses, colts, barren and unprofitable cattle, sheep, and lambs, from which they had wool without setting out, rendering, or paying to the plaintiffs the tithes of such wool and lambs, or making them any satisfaction for the same, or for the herbage or agistment of such oxen, beasts, horses, colts, and other barren and unprofitable cattle, sheep and lambs so fed and depastured by them on their said allotments, and which they ought to have done; that the plaintiffs had entered into an agreement as to their part or proportion of the said tithes for the said year, as they were respectively to receive as and for his or their part or proportion of the tithes; that they had caused the same to be represented to the defendants; that they had made frequent applications to them to account for their several titheable matters aforesaid, and to pay them what should appear to be due thereon; but that they had, under various pretences, refused so to do. The plaintiffs then charged, that by virtue of certain letters-patent of *James the First*, dated the fourth of *February*, in the fourth year of his reign, they, and those under whom they claimed, became well entitled to the said rectory, and to all the tithes of corn, grain, hay, agistment, and other tithes yearly arising therein, and to all such rights and interests whatsoever as his said majesty had or was entitled to therein; that not only the said commons and lands respectively so divided and inclosed under the said act of parliament before the division and inclosure thereof, and also the several allotments thereof since such division and inclosure, and various other pieces or parcels of land which formerly or late belonged, and which had been separated from the same by encroachments or otherwise, but also such parts of the second wards so allotted or appropriated to *King Charles*, if any such appropriation was ever made, were and had been generally reputed by several ancient persons then living and others who were dead, and who were of considerable ages when they respectively died, to be within and parcel of the said rectory and parish; that the boundaries of the parish having been annually perambulated by some of the parishioners, the whole of the said wards were always included in such perambulations as being within the parish; that before such division and inclosure so took place, the said commons and wastes so divided and inclosed were generally depastured with oxen, beasts, horses, colts, and other barren and unprofitable cattle, and also with sheep and lambs belonging to the several owners and occupiers of houses, cottages, and inclosed lands or grounds within the said parish, as having a right of common or some right of the kind thereon, and particularly of the said defendants respectively; that all tithes arising from the same had, from time immemorial, been received by the rectors of the rectory, their lessees, farmers, or agents, or some satis-

LYGON AND
ANOTHER
against
STRUTT AND
OTHERS.

that the plaintiffs *Lygon* and *Gisborne* had adjusted the portions of tithes to which they were respectively entitled;

but that the defendants had refused to pay the tithes of the said allotted lands; that they claim the said tithes under a grant of the rectory from *James the First*; that the land so inclosed and allotted had always paid tithes;

that they were parcel of the parish;

and had always been included in the perambulation thereof; that they were the lands of which the occupiers, before the inclosure, enjoyed a right of common;

LYGON AND
ANOTHER
against
STROUT
AND OTHERS.

that they had
been rated to the
parish;

that in an infor-
mation, the ju-
ry had found
that *Belper Ward*
and *Chevin Ward*
were within the
parish;

that the said
ward had also
been decreed to
be therein;

faction for the same in money in respect of such sheep and lambs, and of the herbage or agistment of such oxen, beasts, horses, colts, and other barren and unprofitable cattle; that as further evidence of the said commons and waste lands so divided and inclosed as aforesaid being within the said rectory and parish, the several parcels of ground, which had been so separated therefrom by such encroachments, had, since the separation thereof, produced annually corn, grain, and other titheable matters, the tithes of which, or some satisfaction for them, had been constantly paid to the rectors and owners of the rectory and tithes; that the persons possessing or occupying such parcels of land, and particularly the defendants, or those under whom they claimed, had constantly been rated or assessed in respect thereof towards the common burthens of the parish; that they had likewise always performed parochial duties or services in respect thereof; that the said defendants having a right of common on the said commons and waste lands before the division and inclosure thereof, had likewise been rated and assessed towards the common burdens of the said parish, in respect of such right of common, as appurtenant to the several and respective farms within the rectory and parish, as being part of such farms, or otherwise increasing the value thereof respectively. The bill then charged, that the information exhibited against *Reginald Lygon*, by his majesty's attorney-general, at the relation of *P. Davenport*, as having intruded himself into his majesty's possessions by receiving the tithes not only of *Holland Ward* but also of *Belper Ward* and *Chevin Ward*, prayed, that the said relator might be quieted in the enjoyment of the tithes of the said three wards, and that the defendant might account for the tithe received by him, and pay to the use of his majesty so much as had been received before the commencement of the relator's lease (which had long since determined), and to the relator so much as had been received since the commencement thereof; that the part of *Belper Ward* and *Chevin Ward*, being within the parish of *Duffield*, was put in issue, and after the examination of many witnesses, the information was, with respect to all the matters therein relating to the said two wards, dismissed. The bill then further charged, that *R. Lygon*, as impropriate rector of the rectory, and others claiming under him as lessees, exhibited their bill in this court, in which his majesty's attorney general, *P. Davenport*, and certain persons occupying lands in *Belper Ward*, were defendants for the purpose of establishing the right of the said *R. Lygon* as such rector, and those claiming under him, to the tithes of those lands; that in the said suit, the fact of their being within the said rectory and parish was likewise in issue; and after examination of witnesses, it was decreed that the defendants, the occupiers of the said lands, should account for and pay the titheable matters arising from the lands claimed by them to the said com-

complainants, with costs. The bill then further stated, that the tithes not only of the said commons and waste lands so inclosed by virtue of the said act of parliament, but also of the rest of the lands constituting the said two wards called *Belper Ward* and *Chevin Ward*, had been constantly paid to the rectors of the said rectory, and those claiming under them; that notwithstanding which, his majesty's attorney-general, on the behalf his majesty, claimed to have some right or interest to the tithes so claimed by plaintiffs; that in order to remove any pretence for not accounting for and paying to the plaintiffs the tithes of the titheable matters they actually entered into such agreement, and gave notice thereof to the said defendants, and offered to indemnify them in the premises, on their duly accounting for and paying to them respectively the tithes of the several titheable matters aforesaid, according to the said agreement, but which they refused to do. The bill therefore prayed, that the defendants the occupiers might come to a just and fair account with the plaintiffs for the single value of the tithes which had arisen upon their several allotments of the said commons and waste lands so occupied by them respectively, and pay according to the respective rights and proportions settled between the plaintiffs by the said agreement in this behalf; the said plaintiffs thereby submitting to indemnify them touching the premises in such manner as the court should direct.

The defendants *T. Rogers, S. Linam, J. Strutt, D. Norman, J. Melbourne, and T. Millington* said, that previous to and in the ninth year of the reign of *Charles the First*, there was a certain forest situate near the parish of *Duffield*, called and known by the name of the *Forest of Duffield*, or *Duffield Firth*, and which was then, and for many years before, or the greater part thereof, divided into several wards respectively called by the names of *Belper Ward*, otherwise *Bean Reper Ward*, *Chevin Ward*, and *Holland Ward*, otherwise *Hollin Ward*. That the owners and occupiers of lands within the townships or liberties of *Belper, Duffield, Hazlewood, and Madeney*, were entitled to and had immemorially enjoyed a right of common for all their sheep and other commonable cattle upon the *Forest of Duffield*, and particularly in *Belper Ward* and *Chevin Ward*; that *Charles the First* was seised in his demesne in right of his *Duchy of Lancaster*, or in right of his crown, or both or one of them, of the *Forest of Duffield* so divided, together with all and all manner of tithes arising or accruing within, upon, or out of the same, and particularly the said two wards called *Belper Ward* and *Chevin Ward*, subject to such right of common as the commoners had thereon; that the whole of the *Forest of Duffield* was and had ever been extra parochial, and not within the rectory or parish of *Duffield*, or the titheable places thereof, or a part of any other parish; that a decree was made the twenty-first of *November*, in the ninth year of *Charles the First*, in THE DUCHY COURT OF LAN-

LYGON AND
ANOTHER
against
STROUT
AND OTHERS.

but that although *Belper Ward* and *Chevin Ward* had constantly paid tithes, before the inclosure, to the impropriator of *Duffield*, the king now claimed some interest therein.

The bill prayed an account of the tithes which had arisen on the said allotments in the possession of the defendants, and payment.

The defendants say, that in the reign of *Charles the First* there was a royal and extra-parochial forest called the *Forest of Duffield*, which was divided into three wards called *Holland Ward, Belper Ward, and Chevin Ward*; that the occupiers of land in the hamlets of *Belper, Duffield, Hazlewood, and Madeney*, had right of common in the said forest.

that no part of the said forest was within the parish of *Duffield*, or any other parish;

LYDON AND
ANOTHER
against
STRETT AND
OTHERS

that *Charles the First* granted two third parts of the said three wards to certain persons, in pursuance of a decree in the duchy court;

that the other third part was allotted to the king in lieu of his right to the whole forest and the tithes thereof;

that the persons, having a right of common to the two-third parts, enjoyed the same tithe free;

that no tithes whatever had been paid for the same;

CASTER, in a cause between his majesty's attorney-general of the said duchy, on behalf of his majesty informant, and *the Earl of Newcastle* and others defendants, respecting the said *Forest of Duffield*; that in pursuance of the said decree *Charles the First*, by letters-patent under the seal of THE DUCHY OF LANCASTER, dated the second of *September*, in the tenth year of his reign, granted to certain persons therein, and in the said decree named, two third parts of the said three several wards, and all cottages and buildings thereon, together with the rights, jurisdictions, and appurtenances thereunto belonging, as fully and freely, and in as ample manner as the same had come to his majesty's hands, except his fishery of the rivers *Dervent* and *Ecclesbourne*, and the advowson and right of presentation to all rectories, vicarages, chapels, and other ecclesiastical benefices to the premises thereby granted, or any part thereof, relating or appendant, to hold according to the intent of the said decree; that the other third part of the said three wards was duly set out and allotted to *Charles the First*, and that he received and accepted the same in full compensation and satisfaction of his entire and whole right in *the Forest of Duffield*, and the tithes arising upon the said other two-third parts thereof; that the said several rights of his said majesty, and of the commoners in and upon the said three wards, were at that time known and duly considered, and had in full contemplation; that the said one-third part of the said three wards, so allotted to *Charles the First* in consequence of the said decree, was a full satisfaction for his right and interest not only to the soil but also to the tithes of the other two-third parts of the said wards called *Holland Ward*, *Belper Ward*, and *Chevin Ward*; that several persons, having a right of common to the said two-third parts of the said wards comprized in the said letters-patent, had used and enjoyed such right of common for all their commonable cattle without paying any tithe whatsoever, or any having been demanded until the year 1771; that in the said year *Hollin Ward* was inclosed pursuant to act of parliament; that in the year 1786 an act of parliament passed for dividing and inclosing *Belper Ward* and *Chevin Ward*, &c. and such allotments were made as in the bill stated; and they insisted, that the said two-thirds of the said ward were free and exempted from the payment of any tithes, and particularly as mentioned in the said decree in the duchy court; and also that no tithes whatsoever had been paid for the remaining two parts of *Hollin Ward* since the inclosure thereof in 1771; that they hoped to have the same benefit thereof as if they had pleaded the same in bar to the bill, and the discovery and relief thereby prayed. They admitted, that the plaintiff *William Lygon* had been for many years past and then was impropiator of *Duffield*; that there were several townships, districts, villages, hamlets, and liberties within the said parish, as stated in the bill; that the said commons or wards comprised one thousand five hundred acres; that the several owners and occupiers of houses and lands within the townships of *Belper* and *Chevin*

Chevin before such inclosure took place always had or enjoyed a right of common for sheep and other commonable cattle in respect of their several houses, &c. They also said, that *W. Lygon*, as impropiator, might be entitled to the great and small tithes of such parts of the parish as were titheable, except as to such portion as *T. Gisborne* might be entitled to, and that such tithes might have been duly paid to them. They admitted, that before the inclosures and allotments under the statute of 24. Geo. 3. were made, the several owners or occupiers of lands in the parish of *Duffield* had purchased or taken to farm several of such allotments from the persons to whom they were made, and that they and those under whom they claimed had respectively used and enjoyed a *right of common* in and upon the lands comprised in the said act, and so allotted, from time immemorial before the allotting thereof. They also admitted, that they had respectively several considerable parcels of the said lands allotted to them under the said act in lieu of their respective rights of common in and upon the whole of such lands, in respect of their said several messuages, farms, and lands in the parish, and that they had cultivated such parts as were allotted to them, and had had from the same divers titheable matters and things without setting out any tithes thereof, or making the plaintiffs any satisfaction for the same, as they believed that no tithes were due or payable, and therefore were not bound to set forth the same, or any account of them, which they had upon their allotments in 1790, or of the quantities, kinds, and values thereof; but they said, that in case the plaintiffs should be able to establish any right to the tithes of all or any of such matters and things, they were ready and willing to account for the same in such manner as the court should direct. They further said, that they were strangers to the agreement entered into between the plaintiffs; but they admitted, that they had caused it to be represented to them that the same had been made, and that such application for such purposes as stated in bill to have made to them had been made, and which they had refused to comply with, the plaintiffs not being entitled to any tithes in respect of the allotments of the said commons and lands in their occupation; and they insisted, that such allotments were respectively exempted from the payment of tithes. They denied, that the commons or wards called *Belper Ward* and *Chevin Ward*, comprized in 24. Geo. 3. or any part thereof, were or was before the division or inclosure thereof under the said act, or that the allotments thereof since such inclosure, or any other pieces of land which formerly belonged thereto, and had been separated from the same by encroachments, were generally reputed by ancient persons then living, and others who were then dead, and were of considerable ages when they died, to be within or parcel of the parish; but they admitted, that before such inclosure took place, the premises so inclosed, and which were

LYGON AND
ANOTHER
against
STUART
AND OTHERS.

that the plaintiff might be entitled to the tithes of such parts of the parish as were titheable;

that the allotments, as directed in the bill, had been made to them;

that they had had titheable matters therein;

that the agreement between the plaintiffs respecting their portion of tithes had been communicated to them;

that no part of *Belper Ward* or *Chevin Ward*, or any lands separated by encroachment therefrom, had ever been reputed parcel of the parish of *Duffield*;

LYGON AND
ANOTHER
against
STRUTT
AND OTHERS.

that the tithes of
agisting cattle on
the said common
had never to
their knowledge
been paid;

that the tithes of
the piece of land
which had been
taken by en-
croachment from
the said com-
mon, had been
paid by poor per-
sons, and had
been refused by
others;

that the owner
of such encroach-
ments had not
to their know-
ledge been rated
for the same to
the parish;

that the grant of
the rectory by
James the First
did not entitle
the grantees to
all the rights the
granter had
therein;

comprized in the said act, were generally depastured with oxen, beasts, horses, colts, and other barren and unprofitable cattle, and also with sheep and lambs belonging to the several owners and occupiers of houses, cottages, and inclosed lands or grounds within the said parish, as having a right of common or some right of the kind thereon. They denied, that they had ever heard, save by the bill, that the tithes of wool and lambs, and the tithes of herbage or agistment, or of any of such oxen, beasts, horses, colts, and other barren and unprofitable cattle, had from time immemorial, or at any time been received by the rectors of the said rectory, their lessees, farmers, or agents, or that any composition or satisfaction was ever made to them or any of them for the tithes of any such last-mentioned matters and thing: arising from the said commons called *Belper Ward* and *Chevin Ward*, distinct and separate from the tithes arising from the ancient inclosed lands within the parish of *Duffield*, and save that no compensation or other satisfaction had ever been made to the plaintiffs exceeding the value of the tithes arising from such ancient inclosed lands, and denied that it so appeared from any receipts or acquittances, or written discharges in the custody of any of the defendants. They admitted, that the several parcels of ground which had been separated from the said commons or wards and premises comprized in the said act, by encroachments, had, since the separation thereof, produced annually corn, grain, and other matters; and said, that the tithes of all or some of the matters produced on some of such encroachments, or some compensation for the same, might have been paid to the rectors or owners of the said rectory, but that some persons had refused the same, and that if any had been paid they had been paid by distressed persons who were unable to contest the payment thereof, as the said defendants conceived that the last-mentioned lands were exempt from the payment of any tithes, and therefore insisted that such payments ought not to be received as evidence of the plaintiff's right to the tithes of the aforesaid commons and wastes comprized in said act of parliament, and particularly the parts thereof which had been allotted to them. They denied that, to their knowledge, save by the bill, the owners or occupiers of such encroachments had been rated or assessed in respect thereof, or had performed any parochial duties or services in respect thereof, or that the defendants, or any other person, having a right of common on the said commons or wards and lands comprized in the said act of parliament, had been so rated or assessed in respect of such right of common appurtenant to their several and respective farms or lands, and increasing the value thereof or otherwise in respect of such right of common. They said, that they did not admit that the plaintiffs, or those under whom they claimed, did by virtue of or under the grant or letters-patent of *James the First*, dated the fourth day of *February*, in the fourth year of

of his reign, become in any manner entitled to the rectory, and to all the tithes of corn, grain, hay, agistment, and other tithes yearly arising within the said parish and rectory, or to all such right and interest whatsoever which his said late majesty had or was entitled to therein. They further said, that they did not admit that the commons and lands respectively divided and inclosed under the said act were, before the division or inclosure thereof, or that any of the allotments thereof since the division and inclosure, or any pieces or parcels of land which formerly or late belonged to, and which had been separated therefrom by encroachments or otherwise, had been generally reputed, or that any parts or particulars of the two ancient wards which were allotted to *Charles the First* were or had been generally reputed by any ancient persons then living, or others who were then dead, to be within or parcel of the rectory and parish of *Duffield*, or that the whole of the said wards had been included in the perambulation made for the purpose of ascertaining and perpetuating the boundaries of the said parish of *Duffield* as being within the said parish. They also said, that they did admit that the information exhibited in the duchy court aforesaid was dismissed upon the hearing thereof, with respect to all matters therein contained respecting the claim of tithes of *Belper Ward* and *Chevin Ward*; but insisted, that such dismissal was not ordered or decreed upon the merits respecting the question of the right or claim of the informant or relator to the tithes of the said two wards, but by consent and agreement between the parties; and therefore they insisted and submitted that the dismissal of the said suit, so far as it related to the claim thereby made to the tithes of the said two wards, ought not to be received or considered as any evidence in favour or support of the right or claim set up by plaintiffs by their bill, or in prejudice of the defence set up by defendants in opposition thereto. They said, that they were strangers to the other suit mentioned in said bill; and that they knew not that the tithes of the commons or waste lands inclosed by virtue of said act of parliament, and situated within the said two wards, had been ever paid to any rectors or rector of the parish of *Duffield* for the time being, or to any person or persons claiming under them or him.

The attorney-general, on the behalf of his majesty, said, that he was a stranger to the matters and things in the bill contained, and left the plaintiffs to prove the same as they could; and insisted upon and claimed all such right and interest in the premises in the bill mentioned as it should appear his majesty, in right of his duchy of *Lancaster* or otherwise, was entitled to; and he submitted the same to the judgment of the court, and prayed that the Court would take care of his majesty's right and interest in the premises.

LYGON AND
ANOTHER
against
STROUT
AND OTHERS.

that no part of the allotted lands were reputed to be parcel of the two wards allotted to *Charles the First*;

that the verdict given on the trial of the information did not prove that *Belper Ward* and *Chevin Ward* were within the parish;

The attorney-general claims such right and interest as the king may appear to have in the premises.

LYSON AND
ANOTHER
against
STRUETT
AND OTHERS.

The cause
heard.

The plaintiffs replied; the defendants rejoined; and the cause being at issue, divers witnesses were examined on both sides; and publication being duly passed, the cause came to be heard on the twenty-seventh day of *April* 1795, and the several following days; and upon hearing counsel for both sides; and reading the following evidence on behalf of the plaintiffs, viz. the answers of the defendants, the owners and occupiers, and the depositions of several witnesses to the several interrogatories exhibited to them in this cause; and also their cross examinations; an act for dividing and inclosing certain commons and waste grounds called *Belper Ward* and *Chevin Ward*, in the parish of *Duffield*, in the county of *Derby*; an act of parliament made in the year 1769 for dividing and inclosing that part or share of *Belper Ward* which belongeth to *Highb Hedge*, in the county of *Derby*; a parliamentary survey in the year 1651; a survey from the *Duchy Court of Lancaster*, intituled, "A survey of her Majesty's Wards in the Counties of *Stafford* and *Derby*, taken in the twenty-ninth Year of the Reign of *Queen Elizabeth*, pages 63 and 64;" and upon reading the following evidence on the part of the defendants, the owners and occupiers, viz. an office copy of a grant of appropriation of the church of *Duffield*, to the *Hospital of Saint Mary in Leicester*, dated the twenty-third of *March*, in the fifth year of *Edward the Third*; the copy of a wardmote from the duchy office of *Duffield Firsh*, dated the fourteenth of *November*, in the ninth year of *Henry the Fourth*; an office copy of an ecclesiastical survey taken pursuant to an act of parliament of the twenty-seventh year of *Henry the Eighth*; an office copy of a certificate of the college of *Newark at Leicester*, in the thirty-seventh year of *Henry the Eighth*; an office copy of a grant of the fourth year of *James the First*, to *Henry Butler* and *Henry Ogle*; a commission dated the twenty-seventh of *March*, in the ninth year of *Charles the First*, and the report of the commissioners thereon, dated the twentieth of *September* 1633; a survey of the *Canny Grey House* in *Duffield*, dated in 1651; and an office copy of a grant, dated the second of *September*, in the tenth year of *Charles the First*; a manuscript, dated the fifth of *November* 1613, signed *Anthony Bradshaw*, offered to be read for the defendants, but objected to by plaintiff's counsel, and defendant's counsel heard in support of the evidence, and the objection allowed; an act of parliament made in the year 1771 for inclosing *Holland Ward*; an office copy of an information filed in the duchy court by the attorney general of the *Duchy of Lancaster* against *Richard Broom*, and the answers of the defendants thereto; extracts from *Workworth Register* from the year 1756 to 1764; and extracts from *Mugginton Register* from the year 1769 to 1785; an office copy of a grant, dated the fourth of *February*, in the fourth year of *James the First*, to *Henry Butler* and *Henry Ogle*; extracts from the parliamentary survey

taken

LYGON AND
NOTHER
against
STROUT
AND OTHERS.

taken in pursuance of an act of parliament of the twenty-sixth year of *Henry the Eighth*; an inquisition *post mortem* of *Edmund, Earl of Lancaster*, taken in the twenty fifth year of *King Edward the First*; an extent, dated in *September*, in the third year of *Richard the Second*; also a register book of the *Priory of Tuttebury* produced by *F. Townsend, Esquire*, *Windsor Herald*, read in evidence by consent (a) of the plaintiff's counsel, viz. No. 51, intituled, "*Prima fundacis Ecclesie de Tettesbur*;" No. 52, intituled, "*Carta Robelli Comitis Junioris de Ferrers*;" No. 30, intituled, "*Carta Galfridi Coveti Epi per Eccles de Dubbrig de Miffon et Tuttebur*." No. 57, intituled, "*Carta Willmi de Ferr Comitib per toto Exitu de tota Foresta de Duffield*;" No. 16, intituled, "*Confirmacio Coveti et Lich. Epi per X libris Ecclesia de Duffield*;" No. 17, intituled, "*Confirmacio Willmi Decani et Capiti Lich B. H. libris Ecclesia de Duffield*;" No. 18, intituled, "*Confirmacio W. Prioris et Covetus Covetr. P. X. libris de Eccle de Duffield*;" No. 267. intituled, "*Sententia contra Rectorem Ecclesia de Duffield*." No. 4, intituled, "*Sententia contra Rectorem Ecclesia de Duffield*;" No. 37, intituled, "*Sententia cujusdem Executio contra Rectorem Ecclesia de Duffield*;" No. 99, intituled, "*Inqseio Capta X decimis de Duffield Frythe*;" a certificate of the deputy auditor of the *Duchy of Lancaster*, dated the twenty-second of *November* 1667; an order, dated the twenty-third of *November* 1637, to prepare a lease to *Edmund Sydenham*; a lease dated the twenty-fourth of *November*, in the thirteenth year of *Charles the First*, from that king to *Edward Sydenham*; a lease dated the twenty-third of *December*, in the twentieth year of *Charles the Second*, from that king to *Ralph Bagnam*; a lease dated the second of *July*, in the twenty-fifth year of *Charles the Second*, from that king to *Sir John Curzon*; another dated the twenty-eighth of *February* 1697, from *King William* to *Sir Nathaniel Curzon*; another dated the tenth of *April*, in the twelfth year of *George the Second*, from that king to *Peter Davenport, Esquire*; another dated the thirtieth of *July* 1768, from *King George the Third* to *Lords George Henry and Frederick Cavendish*; another dated the third of *May* 1775, from the same king to *Lord Scarsdale*; and another dated the seventh of *May* 1776, with an assignment from *Lord Scarsdale* and *Richard Broom*; an office copy of a decree made in *Michaelmas Term*, in the ninth year of *Charles the First*, in a cause wherein the attorney-general of the duchy was informant, and the *Duke of Newcastle* was defendant; the office copy of a bill in THE DUCHY COURT, in a cause between the attorney general at the relation of *Davenport* and *Lygon*, and the answer of the defendant thereto, and the depositions of several witnesses taken in the said cause on the part of the defendants; a book, being the *vicar's Easter Roll* for

(a) See *Lygon v. Strutt*, Anstr. Rep. 601.

LYGON AND
ANOTHER
against
STROUT
AND OTHERS.

the parish of *Duffield* in 1704, read in evidence for the plaintiffs; the decree in the same cause of *Lygon v. Davenport*, dated the twenty-eighth of *January* 1744; an entry from *Doomsday Book*, under the title "*Terra Henrici de Ferraris*;" a decree of the Court of Exchequer at *Westminster*, in a cause between the attorney general against *Poole*, and others dated the sixteenth of *June* 1660; other depositions of witnesses taken in this cause; the deposition of *Samuel Lane* being offered to be read to the sixth and twentieth interrogatories was objected by the plaintiff's counsel; but the objection was over-ruled, and the depositions read; and upon hearing the plaintiff's counsel, the further evidence was read on the part of the said plaintiffs, viz. a register book of the *Priory of Tuttsbury*, produced from THE HERALD'S OFFICE, and the following entries were read therefrom by consent, viz. No. 1, "*Carta Willmi de Ferr. Comitibus pro toto Exitu de tota Foresta de Duffield*;" an inquisition in 1367 - in page 158 of the above-mentioned book; minister's accounts from the *Augmentation Office*; an account of the thirty-fourth year of *Henry the Eighth* of the *Priory of Tuttsbury*; a certificate of the commissioners upon the dissolution of monasteries in the thirty-seventh year of *Henry the Eighth*; minister's account of the fourth year of *Edward the Sixth*; also an order made at the quarter sessions at *Derby* the fourth of *October* 1719; an original and amended bill filed in the Court of Exchequer in *Trinity Term*, in the thirteenth year of the reign of *George the Second*, by *Reginald Lygon* and others against *Mills* and others; the answers thereto; the depositions taken in the said cause; the decree nisi made in the said cause, dated the twenty-fourth of *January* 1744, and the decree absolute the second of *May* 1745; an act of parliament passed in the year 1769, for inclosing that part or share of *Belper Ward* which belongs to *High Hedge*; the depositions taken in a cause in THE DUCHY COURT OF LANCASTER, between the attorney-general of the duchy at the relation of *Peter Davenport* against *Lygon* and others; the depositions taken in the cause of *Lygon v. Mills*, and several depositions taken in this on the part of the said plaintiffs; a letter signed *J. Leaper*, *Charles Upton*, dated the sixth of *February* 1786, inclosing proposals to *William Lygon, Esquire*, of the intended inclosure of *Belper Ward* and *Chevin Ward*, and the said proposals read; another letter signed *Charles Upton*, dated the third of *May* 1786, addressed to *William Lygon, Esquire*; office copy of a lease from the duchy court of *Lancaster*, by *Queen Elizabeth* to *Jeronius Bowes*, from the eleventh to the thirteenth year of her reign of the rectory of *Duffield*; and also on reading from the *Tuttsbury Register*, intitled, "*Maneria Prioratus*;" and upon hearing the reply upon the part of the defendants on the fifteenth day of *May* last, this cause was further adjourned for the judgment of the court until this day; when

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THE COURT ordered the deputy to take an account (a) of what was due to the plaintiffs from the defendants the owners and occupiers respectively, for and in respect of the value of the tithes of all such titheable matters and things as had arisen upon their said several allotments of the said commons and waste lands in the pleadings of this cause mentioned; particularly an account of the tithes of corn, grain, hay, wool, lambs, and potatoes, and of the tithes of the herbage or agistment of such oxen, beasts, horses, colts, and other barren and unprofitable cattle, sheep, and lambs, as aforesaid, kept, fed, and depastured by the said defendants respectively on the several allotments so occupied by them respectively as aforesaid.

LYGON
AND ANOTHER
against
STUART
AND OTHERS.

The tithes of the several allotments of land of the said waste grounds and commons, decreed as demanded by the bill,

THE COURT further ordered the defendants to pay the said plaintiffs their costs of this suit to this time; and that the subsequent costs of this suit, with the costs of his majesty's attorney general; and all further directions touching the said account to be reserved until after the report.

with costs.

MACDONALD, *Chief Baron.*
HOTHAM, *Baron.*
THOMSON, *Baron.*

(a) See S. C. Lygon v. Stuart, Anstr. Rep. 602.

THE DUKE OF BOLTON *against* KINGSMILL.

Hampshire, 10th November 1795.

MICH. TERM,
36. GEO. 3.

THE bill stated, that the plaintiff *Harry Poulet, Duke of Bolton*, had, for six years past, been seised in his *demesne as of freehold*, for the term of his life, of the great tithes arising in the chapelries, townships, hamlets, and vills of *Sidmontaine* and *Echimswell*, in the parish of *Kingsclere*, in the county of *Hants*, as parcel of the impropriate rectory of *Kingsclere*; and that he was, for part of the said time, entitled to the tithes of corn, grain, hay, and other great tithes, arising on all the capital farms in the occupation of the defendant *Kingmill*; on the lands in the tenure of the defendants *J. Hobbs* and *J. Booth*, situated in the vills aforesaid, or one of them; that the plaintiff *Jean Mary Poulet* was seised of the tithes of the said farms, as tenant in tail in remainder, expectant upon the death of the *Duke of Bolton*; that the defendants, during the said time, had reaped from their said lands wheat, barley, oats, pease, beans, hay, grass, and clover, in the years 1789 and 1790, but had refused to pay the tithes thereof, or to make a satisfaction for the same. The bill therefore prayed an account and payment thereof.

The impropriator of the great tithes of the parish of *Kingsclere*, in *Hampshire*, claims the tithes arising in the hamlet of *Sidmontaine*, as parcel of the rectory.

See Hil. Term,
21. Geo. 3.

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