



CHAPTER lxi.

An Act to amend the London (City) Tithes (St. Botolph Without Aldgate) Act 1881, and to confer upon the Churchwardens and Tithe Owner respectively additional powers, rights, and privileges ; and for other purposes.

A.D. 1888.

[28th June 1888.]

WHEREAS before the passing of the London (City) Tithes (St. Botolph Without Aldgate) Act 1881 (in this Act called "the Act of 1881"), certain persons (in the Act of 1881 and in this Act called "the tithe owner") were under an Act passed in the 37th year of the reign of His Majesty King Henry VIII. c. 12, and a decree made in pursuance thereof, entitled to certain tithes or sums of money in lieu of tithes arising or growing due in or out of the parish of St. Botolph Without Aldgate in the City of London (in this Act called "the parish") :

And whereas by the Act of 1881, after reciting (among other things) that there were disputes as to the payments to be made in respect of tithes in the parish, and that it was expedient for the settlement of the same, and that it would be beneficial to the inhabitants of the parish and to the tithe owner that all disputes should be settled, it was (amongst other things) enacted that all tithes and sums of money in lieu of tithes whatsoever arising or growing due in the parish, except upon the properties referred to in section 14 of that Act, should, as from the 29th day of September, 1881, cease and be extinguished, and the tithe owner should as from that day accept and receive in lieu and satisfaction of the said tithes and sums of money in lieu of tithes so ceasing and extinguished, and to which he would have been entitled if the Act of 1881 had not been passed, the annual sum of six thousand five hundred pounds (subject to reduction by redemption as therein provided), to be levied and collected by the churchwardens as defined by the Act of 1881 of the parish by means of tithe rates, and the said sum of six thousand

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And whereas under the last-mentioned provision certain redemptions have been effected whereby the annual sum of six thousand five hundred pounds has been reduced to six thousand three hundred and eighty-nine pounds five shillings and fivepence, which is the annual sum now payable under the Act of 1881:

And whereas the Act of 1881 has not been effectual to settle the disputes therein referred to, nor beneficial in some respects to the inhabitants of the parish or in other respects to the tithe owner, and doubts and difficulties have arisen in carrying out some of the provisions thereof; and it is therefore expedient to amend the Act of 1881, and to confer upon the churchwardens and tithe owner respectively additional powers, rights, and privileges:

And whereas William Clement Drake Esdaile and Henry Jeffries Badcock as the trustees of the will of the late Edward Jeffries Esdaile deceased are or claim to be now the tithe owner within the meaning of the Act of 1881, and also of this Act:

And whereas an aggregate sum of eleven thousand five hundred and sixty-two pounds nineteen shillings and eightpence is now due to the tithe owner in respect of the annual sum payable to him under the Act of 1881 down to and including the half-yearly instalment which became payable on the 25th day of March 1888, and he has agreed to accept the sum of six thousand pounds, payable by the instalments and in manner herein-after mentioned, in satisfaction of the said sum of eleven thousand five hundred and sixty-two pounds nineteen shillings and eightpence so due to him as aforesaid, and it is expedient that further provision be made for securing the payment of the said sum of six thousand pounds:

And whereas the tithe owner has agreed, for a period of twenty-one years from the 25th day of March, 1888, to accept, on the terms and conditions herein-after mentioned, the annual sum of five thousand pounds, in lieu of the annual sum for the time being payable to him during that period under the Act of 1881:

And whereas the objects aforesaid cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with

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the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Saint Botolph Without Aldgate Tithe Rate Act, 1888, and shall apply only to so much of the parish as is situate within the City of London and the liberties thereof.

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 Short title and extent of Act.

2. In this Act the term “churchwardens” means and includes the churchwardens for the time being of the parish and the overseers of the poor for the time being thereof and no other person or persons, and the term “poor rates” means the rates made and levied for the relief of the poor of the parish, and the term “tithe owner” means the person or persons for the time being who but for the Act of 1881 would have been entitled to the tithes or sums of money in lieu of tithes arising or growing due in the parish, and the term “house” means and includes shop, warehouse, cellar, stable and every kind of tenement, unless there be something in the subject or context repugnant to such respective constructions.

Interpretation of terms.

3. The sum of six thousand pounds agreed to be accepted by the tithe owner in satisfaction of the sum of eleven thousand five hundred and sixty-two pounds nineteen shillings and eightpence, so due to him as aforesaid, shall be paid to him by the churchwardens as follows, namely: the sum of one thousand and two pounds, part of the said sum of six thousand pounds, within one month after the passing of this Act, and the sum of four thousand nine hundred and ninety-eight pounds, the residue thereof, by forty-two equal half-yearly instalments of one hundred and nineteen pounds each; the first of such instalments to be paid on the 29th day of September, 1888, and a subsequent instalment to be paid on every 25th day of March and 29th day of September, until the whole of the said sum of four thousand nine hundred and ninety-eight pounds has been fully paid and satisfied.

The six thousand pounds in satisfaction of arrears to be paid by instalments.

4. If during the period of twenty-one years commencing the 25th day of March, 1888, on each 29th day of September and 25th day of March, or within two months next after such days respectively, there shall be paid by the churchwardens to the tithe owner the sum of two thousand five hundred pounds, and also an instalment of one hundred and nineteen pounds in respect of the said sum of four thousand nine hundred and ninety-eight pounds, then, and in respect of every half-year for which such payments shall be so made, the tithe owner shall accept the said sum of two thousand five hundred pounds so paid in satisfaction of one moiety of the said annual sum for the time being payable to him under the Act of 1881;

Tithe owner to accept five thousand pounds per annum (on punctual payment) for twenty-one years in satisfaction of the annual sum payable under Act of 1881.

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but if during the said period of twenty-one years the said sum of two thousand five hundred pounds, or the said instalment of one hundred and nineteen pounds, or any part thereof respectively, shall not be so paid as aforesaid, then the whole of the moiety of the said annual sum for the time being payable to the tithe owner under the Act of 1881 (less any sum actually paid to him on account of the said sum of two thousand five hundred pounds during that half year) shall be deemed to be in arrear within the meaning of this Act, and shall be forthwith recoverable by the tithe owner under the powers of this Act :

After expiration of twenty-one years whole annual sum under Act of 1881 to again become payable.

Provided always, that nothing in this Act contained shall, after the expiration of the aforesaid period of twenty-one years, in anywise hinder or prevent the tithe owner from being paid under the Act of 1881, or from recovering under the powers of this Act, the whole of the annual sum for the time being payable to him under the Act of 1881, or shall otherwise prejudicially affect his rights after the expiration of that period :

Forbearance by tithe owner in case of default in any half-year not to preclude him exercising his power in case of subsequent default.

Provided also, that in case in any half-year during the aforesaid period of twenty-one years, default shall be made in payment to the tithe owner of the said sum of two thousand five hundred pounds or of the said instalment of one hundred and nineteen pounds, at the times and in manner herein-before provided, and the tithe owner notwithstanding such default shall forbear to exercise and put in force the powers and remedies by this Act conferred upon him, he shall not, in the event of any such default being made in any subsequent half-year, be in anywise precluded by reason of such forbearance from exercising and putting in force such powers and remedies, or any of them, in order to obtain payment of a moiety of the whole annual sum for the time being payable to him under the Act of 1881.

Churchwardens to levy &c. tithe rates without authority of vestry.

5. For the purpose of raising the annual sum for the time being payable to the tithe owner under the Act of 1881 or under this Act, and also of raising the said sum of six thousand pounds so to be paid to the tithe owner as aforesaid, and of assessing, levying, and collecting the tithe rates in the Act of 1881 mentioned or referred to, the churchwardens shall from and after the passing of this Act be entitled, and they are hereby required from time to time to proceed with such assessing, levying, and collecting without any resolution or other authority of or from the ratepayers or parishioners in vestry assembled or otherwise.

If sum payable to tithe owner be in arrear tithe

6. If the said sum of one thousand and two pounds (part of the said sum of six thousand pounds so to be paid to the tithe owner as aforesaid) shall not be paid to him within two months after the

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passing of this Act, and shall be thus in arrear, or if and whenever the whole or any part of any half-yearly payment of the annual sum for the time being payable to the tithe owner under the Act of 1881 or under this Act, and to become due to him after the 25th day of March, 1888, or if and whenever any instalment in respect of the said sum of four thousand nine hundred and ninety-eight pounds (residue of the said sum of six thousand pounds) shall respectively be in arrear for two months, then and in every such case it shall be lawful for the tithe owner, after having given or left ten days notice in writing at the office of the vestry clerk of the parish for the time being, to collect the amount so for the time being in arrear, together with the costs and expenses of such collection, and for this purpose he shall exercise and have the powers and remedies by this Act conferred upon him.

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owner to levy rates and collect same.

7. For the purpose of raising the amount so in arrear and such costs and expenses as aforesaid the tithe owner shall from time to time, by virtue and under the authority of this Act, make and levy in the parish half-yearly pound rates to be called tithe rates, and the amounts of such rates shall from time to time be such as will provide as nearly as practicable the amount for the time being in arrear, together with such costs and expenses as aforesaid, and such rates shall be levied and collected by the tithe owner on and from the persons by law rateable to poor rates in the parish in respect of the houses by law rateable to poor rates (except the said properties in the 17th section of this Act referred to) and shall be assessed on the annual rateable value of those houses as ascertained by the valuation or assessment for the poor rates for the time being in force: Provided always that in making, levying, and collecting the tithe rates under this section credit shall be given to every tithe payer for the sum or sums (if any) duly paid by him to the churchwardens on account of the rate (if any) made by them for the half-year in respect of which the said arrears are due to the tithe owner, but the giving of such credit shall not as between the tithe owner and the parish diminish the amount for the time being due to the tithe owner or be deemed payment in satisfaction of any part of the arrears so due to him.

Tithe owner to levy rates, and credit to be given to tithe payer for rate (if any) paid to churchwardens.

8. The tithe owner may from time to time give or allow to any tithe payer time for payment of the tithe rate payable by him, or agree to accept payment by instalments, without being responsible for any loss occasioned thereby to the person (if other than the tithe owner) for the time being beneficially entitled to the amount so in arrear as aforesaid, but neither the parish nor the other tithe payers shall be responsible for any such loss.

Tithe owner may give tithe payer time or accept payment by instalments.

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Provision
deficiency or
surplus in
rates.

9. In case the tithe owner shall not in any half-year collect in respect of the said tithe rates the amount then in arrear, with the costs and expenses of such collection, or shall have collected more than such last-mentioned amount, costs, and expenses, the deficiency or excess, as the case may be, shall be taken into account in fixing the tithe rates to be then next levied whether the same shall be levied by the churchwardens or by the tithe owner.

Recovery of
tithe rates
and arrears
thereof.

10. In every case in which any tithe payer shall refuse or neglect to pay, or shall be in arrear in payment of the assessed amount payable by him for fourteen days after the appointed day of payment, it shall be lawful for any justice of the peace for the city of London, and he is hereby authorised and required on application by the tithe owner to summon such tithe payer to show cause before himself or any other justice of the peace of the said city why the payment so in arrear should not be made; and after hearing the matter, if it shall appear that there is any payment so in arrear as aforesaid, it shall be lawful for any such justice of the peace, and he is hereby authorised and required by warrant under his hand to cause the payment in arrear, together with the costs of and incidental to such application, to be levied and recovered from such tithe payer by the tithe owner in like manner as moneys assessed for the relief of the poor would be recoverable, and the amount recovered shall be paid to the tithe owner.

Tithe owner
may inspect
and take
copies of
books of
assessment
&c.

11. For the purpose of ascertaining the persons by law rateable to poor rates, and the houses in respect of which such persons are by law rateable, and the annual rateable value of those houses, and of otherwise enabling the tithe owner to exercise his powers and remedies under this Act, the churchwardens and their officers and all other persons for the time being having the custody thereof are hereby authorised and required at all reasonable times, and free of any charge, to produce for the inspection of the tithe owner, on his giving twenty-four hours notice in writing of his desire to make such inspection, all such books of assessment and other books and papers in their possession or custody which the tithe owner may require, and the tithe owner is hereby empowered from time to time to make and retain for his own use copies of and extracts from all such books and papers as aforesaid, or any of them.

Tithe
owner's
special
powers &c.
to be in
addition to
all other
powers &c.

12. The special powers and remedies by this Act given to the tithe owner shall be in addition to and not in substitution for any other power or powers, remedy or remedies to which he may be entitled for the purpose of enforcing payment by the parish, the churchwardens, or the tithe payers of the said annual or other sum or sums payable to him under the Act of 1881, and under this Act.

13. The tithe owner shall keep one or more books in which shall be made correct entries of all sums collected and received by him under the provisions of this Act, and the date on which and the property in respect of which the same were received, and such book or books shall at all reasonable times be open to inspection by the churchwardens, free of any charge, on giving to the tithe owner twenty-four hours notice in writing of their desire to make such inspection.

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 Tithe owner
 to keep books
 of account.

14. The amounts payable under this Act by each tithe payer shall, for the purpose of determining the value on which his property is to be rated to the tithe rates, but for no other purpose whatever, be treated as if the same were tithe commutation rentcharge and included in the 4th section of the Valuation (Metropolis) Act, 1869.

Basis upon
 which value
 of property is
 to be deter-
 mined.

15. For the purpose of making, levying, and collecting the several rates required or authorised to be made, levied, and collected under this Act, the churchwardens, as defined by this Act, and also the tithe owner shall be entitled to proceed in the same manner, and shall have the same powers, remedies, and privileges as the churchwardens as defined by the Act of 1881 have in the making, levying, and collecting of poor rates, but no resolution or other authority of or from the ratepayers or parishioners, in vestry assembled or otherwise, shall be necessary or requisite.

Church-
 wardens
 and tithe
 owner to levy
 rates as poor
 rates.

16. The several rates by this Act or the Act of 1881 required to be made, levied, and collected, shall be made, levied, and collected subject to the same provisions and rules of law as poor rates with respect to the appeal against any assessment made on property liable to poor rates.

Appeal
 against
 assessment.

17. Nothing in the Act of 1881 or in this Act shall subject any of the properties exempted by the 14th section of the Act of 1881, or any of the property described in the schedule to this Act, to be assessed to the payment of any rate or assessments whatsoever under this Act: Provided that the schedule to the Act of 1881 shall be read as if the figures and words "146 (passage only)" had been inserted therein between the figures "145" and "147."

Exemption of
 certain
 properties
 from the
 operation of
 the Act.

18. Nothing in this Act shall alter, prejudice, or affect the rights of the Metropolitan Railway Company, or the Metropolitan District Railway Company, or the Metropolitan and District Joint Committee, to or in respect of any tithes or yearly sum or sums of money by way or in lieu of tithes payable to them in respect of any house in the parish, or to which they may be from time to time entitled under or by virtue of the said Act of the 37th year of the reign of His Majesty King Henry VIII., or the Metropolitan and District Railways (City

Saving rights
 of Metropoli-
 tan and
 Metropolitan
 District
 Railway
 Companies
 and joint
 committee as
 tithe owners.

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As to pending suit between John Payne and others and W. C. D. Esdaile and another in the House of Lords.

19. Whereas an appeal to the House of Lords is now pending in a suit between John Payne and others, appellants, and William Clement Drake Esdaile and another, respondents: Be it enacted that nothing in this Act contained shall be held or construed to prejudice or affect the rights or position of the parties to the said suit, or any or either of them, or in any way affect any judgment already delivered, or which may be delivered in the before-mentioned appeal in such suit, or alter or vary the effect of the same.

Tithe owner not to be assessed to poor rates &c.

20. The tithe owner shall not in respect of any principal sum payable to him under this Act or under the Act of 1881, be liable to be assessed to or for any poor rate or to or for any other rate, tax, or assessment whatsoever (other than income tax), anything in this Act or in the Act of 1881 contained to the contrary notwithstanding.

Providing for disability of tithe owner

21. If the tithe owner shall at any time be or become a lunatic, infant, or under any other disability, he may for all the purposes hereof act by the committee of his estate (if any) or by such person or persons as may be appointed for that purpose by the Chancery Division of Her Majesty's High Court of Justice.

SCHEDULE referred to in the foregoing Act.

The several properties which have since the passing of the Act of 1881 been, or which may hereafter from time to time under the provisions of that Act be certified by the Land Commissioners for England to be exempt from tithe, and likewise the several properties which since the passing of the Act of 1881 have been redeemed or which may hereafter be redeemed from tithe rates under the provisions of the Act of 1881.

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