

Richard Tillesley
Animadversions upon M. Selden's History of tithes,
first edition
London
1619

<iii>

ANIMADVERSIONS
vpon M. Seldens
HISTORY
OF TITHES,

...

Maintaining the 'lus diuinum' of Tythes or more,
to be payd to the Priesthood vnder the
Gospell:

By RICHARD TILLESLEY Doctor in
Diuinity, and Archdeacon of Rochester.

...

LONDON,
Printed by IOHN BILL.
M. DC. XIX.

<xlii>

... and before these, that honour of my poore dignity,
his Master, and the restorer of learning in my mother the
Vniuersity of Oxon, the famous Robertus Pullus, or
Pullenus, or Pullanus sometimes Archdeacon of Ro=
chester (as out of an Epistle written by Ascelinus Bishop
there, against him, to Eugenius the Third, by conference
of other writings, I haue certainly collected) ...

In Chartul. Ec=
clesiæ Roffens.
Videsis etiam
Bernar. ep. 205.

174

... But let Ethelulph himselve
be his owne interpreter, first in a Charter of his, concerning
land giuen to Diama, then Bishop of Rochester, where the
words are, 'Ego Ethelwolfus Rex Occidentalium Saxonum nec=
non & Cantuariorum pro decimatione agrorum quam Deo
donante cæteris Ministris meis facere decreui, Tibi Diumæ Mi=
nistro meo dabo vnam villam quod nos Saxonice An Haga dicimus
in Meridie Castelli Hrobi, & decem iugera a meridiana plaga
villuli illius adiacentia — quod hoc ipsum tibi adhibendum &
possidendum concedendo donamus, vt post dies tuos cuicumque hæ=
redi tibi placuerit derelinquendam cum plena libertate habeas po=
testatem. Anno 855. Indict. 3. hoc est, diuina gratia largiente
quando vltra mare Romam perrexi,' In this it is manifest that
lands, and not Tythes were giuen to Diama, ...

In Textu Rof=
fens. & in chart.
Episc. Roffens.

181

If by reading the priuate Chartularies of the Church of Ro=
chester, I had not found small gifts, as of an Halfepenie, of an
Egge, and such like, euen by Charter conueyed vnto Mo=
nasteries, I should wonder ...

184

... To which I could adde that, in the Char=
ter of Henry the 1. of certaine Churches to the Monasterie of
Rochester, reckoning vp the Tythes and profits giuen, hee
sayth by comparison, 'Sicut Middletunam Sanctus Augustinus
melius habuit tempore patris mei,' As S. Augustine had Mid=

In Textu Rof=
fens.

dletune in the time of my Father. But heere, not the Man,
but Monasterie must be vnderstood, . . .

185

E Registro E=
piscopi Roffens.

. . . Yet that in *his time
Tithes were annexed to the Church, appeareth in his char=
ter, confirming the gift of the Mannor of Leuesham, &c. to
the Church of St. Peter of Gant, 'sita in Monte Blandinio,' Hee
saith, 'cum Ecclesiis Cœmiteriis, Decimis &c.' . . .

*<king Edward's>

188

. . . for amongst the Muniments of

189

Chart. Roffens.
Ecclesiæ

the Church of Rochester, there is an agreement (vnder seale
both on the Monkes and Bishops part) betweene Gilbert
Glanuill Bishop of Rochester, and the Priour and Couent
there, (after a long suit in the Court of Rome) vpon certaine
demaunds on each part, whereof one for the Bishop is thus;
'Tertio, mouimus iis quæstionem, de Decimis quam suis quam
aliis, & pensionibus, quas de Ecclesiis in Episcopatu Roffen=
si constitutis, contra Concilium Lateranense, & citra autho=
ritatem Episcopalem percipere non verentur;' Thirdly, wee
questioned them for Tythes, both their owne and others, and
for pensions, which they presume to receiue of the Chur=
ches, in the Diocesse of Rochester, contrarie to the Coun=
cell of Lateran, and without the Bishops authoritie. . . .

193

Ad Pag. 310.
&c.

But because the Chartularies of the Church of Rochester,
are both more largely insisted vpon by the Author, and
for seuerall respects seeme to be of best credite with him, as
quoting them pag. 282. 'Ante alia vetera Monumenta consulas
si placet Chartul. Roffensis Ecclesiæ,' and in pag. 370. Since by
the Grant of my gracious Mr. His Maiestie, I am a Prebenda=
rie of the same Church, where, for the knowledge of the
Temporall poore estate thereof, I haue had libertie to per=
use the Muniments; I will more largely make answere to
his seuerall instances out of them, as farre as these Charters
and Registers that remaine will permit: for many, either
through iniurie of time, or sacrilegious suppilation of stran=
gers, or neglect, because the portions are conueyed away,
haue miscarried.

And moreouer, I will first shew, how this Monasterie
came to portions of Tythes; Then by whom they were
confirmed; and lastly, I will explaine particular Graunts
wherein Exception may seeme to be taken.

For the first, because the meanes of lawfull Iustification of
a Title are the same with those of lawfull obtaining, I will
out of an ancient Register of this Church set downe a forme
of Iustification of two seuerall portions of Tythes, which al=
though they are not named by him in his Extracts, yet are of
the same reason with the rest, and being of the ancientest, (for
before the foundation of the Monkes heere by Gundulphus
there were no portions giuen) are for better prooffe; I will
exscribe the whole Euidence.

194

P. 23. 'Memorandum quod Decimæ de Chelesfelde & Fern=
burgh, ex dono Ernulfi tunc Domini de Chelesfelde, & Geroldi
Domini de Fernburgh, sunt confirmatæ Monachis Roff. per Wal=
terum Roffensem Episcopum, qui fuit in Episcopum consecratus
Anno Domini 1148. & secuta est confirmatio earundem Deci=

marum per Dominum Adrianum Papam, 1159. Item per eundem Dominum suum confirmatæ iis Decimæ de Modingham, & per eundem Papam, & subsequenter per alios Episcopos Roff. sicut in eorum apparet scriptis, & per alios Apostolicos succedentes Adriano: * 'Et declaratum est in litera dicti Walteri, quod istæ Decimæ possessæ fuerunt ab iis tempore Gundulphi, qui eis illas Decimas ex dono Patronorum, accedente consensu Rectorum Ecclesiarum de Chelesfelde & Chiselherst contulit & concessit, & fuit Gundulphus in Episcopum Roffensem consecratus Anno Domini 1077. & ab illo tempore prædictas Decimas perceperunt. Item habent in Parochia Ecclesiæ de Chiselherst, ex concessione Episcoporum Roffensium ex antiquo Dimidiam Marcam annuæ pensionis.' This sheweth plainly the manner of conueying portions, The Patron giues them to the Bishop by consent of the Incumbent, and the Bishop doth inuest the Monasterie.

* And it is declared by the Charter of the saide Walter Bishop of Rochester, that those Tythes of Chelesfeld and Modingham, were possessed by the Monkes, in the time of Gundulphus, who gaue and granted the saide Tythes, of the gift of Patrons, with the consent of the Rectors of Chelesfield & Chiselherst, & Gundulphus was consecrated Anno 1077. and sithence they haue enjoyed them.

But for the Second and the confirmation also of this, The Charter of Gundulphus himselfe shal be next produced, which still remaineth with his seale appendant. The words are 'Gundulphus Roffensis Episcopus &c. Noscat vestra vniuersitas, quod cognita & intellecta charitate, Christi fidelium, Domini videlicet Henrici Regis & quorundam procerum Nobilium ad Monachos Ecclesiæ B. Andreæ Apostoli, cui Deo authore etsi indignus deseruio. Ego in eorum bona intentione laudans Dominum & gratiam agens Domino Iesu Christo, deuotiones eorum ad ipsos Religiosos approbo & ratas habeo, & iis Episcopalem auctoritatem attribuo & consensum, conferens ipsis & concedens Decimas intra

* I Gundulphus — approue and ratifie their deuotions to the Monkes, and giue vnto them Episcopall authorie and consent, giuing and granting to the said Monkes Tythes lying within the Parishes of diuers Churches of our Diocese, to wit, the Tythes &c.

195

Parochias diuersarum Ecclesiarum nostræ Diocesis constitutas. Decimas videlicet in Strodes & in Chealks de Dominico eiusdem Domini Regis ex eius liberalitate — Decimas de Chiselherst ex liberalitate Goscelini — Decimas de Rundall & de Thu-

ang ex liberalitate Smalmani de Schornes — Decimas in Chesfeld & Fernburgh ex benevolentia Aloldi & Ernulfi ex eorum Dominicis, Decimas de Modingham, ex dono Ansgoti de Chiselherst, Decimas de Bertrey, ex largitione Haimonis Maminot — Decimas de Dominico de Edintune, ex largitione Willielmi de Gurnay, Decimas de Westbrooke in Parochia de Culings ex gratia Radulfi Pincernæ, Decimas etiam de Feodis Episcopatus, videlicet de Wicham, &c. Ego dictis Monachis meis do & concedo in perpetuum. * Volo etiam, quod ipsi Monachi Decimas prouenientes in Maneriis eorum, infra Diocesim nostram constitutas habeant, & retineant omni pace. Has vero Decimas omnes superius expressas, tam eas quæ ex deuotione fidelium acquisitæ sunt, quam eas quæ de feodis meis — ipsis assigno, auctoritate Episcopali qua fungor, mando & constituo, quod Monachi nostri eas habeant, & teneant in vsus victualium suorum, perpetuis temporibus conuertendas — Ista concessionem & ordinationem pro amore Sancti Andreæ, in eius Ecclesia feci, assensu Domini Anselmi Archiepiscopi — Acta anno ab Incarnatione Domini nostri Iesu Christi, 1091.'

* I will that the Monkes haue the Tithes in their owne Mannours within the Diocesse, and reteine them in peace. But all those Tithes aboue expressed — I assigne vnto them, and by my Bishoplike authoritie, which I enioy, I command and ordeine, that the Monkes haue and enioy them alwayes, to bee employed for prouision of victuals. These Graunts and orders I haue made for the loue of Saint Andrew, in his Church, by the assent of Archbishop Anselme. Anno 1091.

This I haue so largely exscribed, repeating most of those particulars, which Mr. Selden quoteth, and were then giuen by him; to shew both in generall, and in those particulars, the authoritie of Bishops in such conueyances, though the grant of the Patron bee præsupposed: and euen how to the Monkes, who were Landlords, the very Tithes of their owne Mannours were by Bishops granted them.

To this I might adde the confirmations of Walter, Richard, Gilbert, &c. Bishops of Rochester; the style of whom is of some, 'Damus,' but of all, 'Concedimus & confirmamus,' and 'ad securitatem, & pacem perpetuam concedimus.' And as

196

for Popes, Adrian, Alexander, Innocent, Urban, &c. they confirmed them. And of those others in other Diocesses, the Archbishops and Bishops confirmations, euen from Anselme downward, are extant: wherein that they and their Churches had interest, the confirmation of the Church of Canterbury to Rochester, pointed at by the Authour in the end of the cited Chartularies of this Church, is sufficient testimony, where they say, * 'Decimas ad Iurisdictionem Cantuariensis Ecclesiæ spectantes, a venerabilibus patribus nostris Cantuar. Archiepiscopi'

pis, Anselmo, Willielmo, Richardo, Baldwyno, & Huberto Canonice collatas, & confirmatas, sicut in Authenticis eorum perspeximus contineri.'

* Tithes belonging to the jurisdiction of the Church of Canterbury, by the most reverend fathers Archbishops of Canterbury, Anselme, William, Richard, Baldwyn, & Hubert, Canonically collated and confirmed, as we have seen contained in their Authentick writings.

They might have added Theobaldus also, for his confirmation also is extant with vs. And in the jurisdiction of that Church, are the portions of Buggeley, Dudindale, Stalesfeild, Bilsintune, Elham, Ysfeild, Hamwold, Scræmbroce, Geddings, which are instanced vpon by our Authour; so that the portions of Halegele, and of Malmain, and the Church and Tithes of Walton, may onely seeme amongst those which he hath cited, to want their confirmation.

As for that of Halegele, 'ex dono Henrici de Port,' although the confirmation of Ralfe Bishop of Rochester, be not extant, yet in that it is mentioned, that the gift was 'pro amore Radulfi Episcopi,' as at his entreatie, his consent may not be doubted of, especially by him, who conceiuing the style of Gundulfus charter, yet shall consider that his successour Gilbert Gantill in his confirmation addeth, speaking of Gundulfus, 'quo procurante & disponente, constat Decimas — fuisse adquisitas:' so the Bishop Radulf. both got and bestowed them, which Radulfus being then 'Abbas de Sagio,' did subscribe to Gundulfus Charter.

And as concerning the portion of Malmains, That, with the other of Halegele were confirmed by Pope Adrian the fourth. Anno 1154. and that of Malmains by Walter Bishop of Rochester, and his successours, but at what time that was giuen, I know not.

197

And as for Walton being in the Diocesse of Norwich (not giuen in the time of Richard the first, as hee coniectureth, but in the dayes of one of the King Williams for his confirmation is 'in Textu Roffensi') it was not a Portion, but a whole Church endowed with Tythes, which was assigned to Felix Stow, alias Filchestow, a cell of this Monasterie by Roger Bigot An. 1086. vnder this name, 'Ecclesiam Sanctæ Mariæ de Waleton cum pertinentiis,' which was then confirmed by William, Hugh, and Roger Bigot: but that had confirmation by the Bishops of Norwich, as Adrian in his confirmation saith, 'Ex dono Rogerii Bigot & hæredum eius & concessione Norwycensium Episcoporum, Herberti, Hebrardi, Willielmi, Ecclesiam Sanctæ Mariæ de Waleton habetis,' Of the gift of Roger Bigot and his heires, and the grant of the Bishops of Norwich, Herbert, Euerard, William, you enjoy the Church of Saint Mary of Walton; now Herbertus was then Bishop. All the Donations therefore of the Church of Rochester, euen 'Ab initio,' we see confirmed.

Yet for the particulars, in the third place.

The portion of Buggeley, for that the Patron by enjoying the payment of three shillings per annum, to the Monkes of Colchester, might seeme to haue some reall interest in Tythes: You must know that this portion was giuen to Colchester; and by them demised to the Monkes of Rochester for that summe,

to which demise that Charter is but of consent, which the very words produced by himselfe might inferre, 'Reddituris inde annuatim Monachis de Colocestria tres solidos quamdiu eandem tenent & habere poterunt,' Paying yeerely to the Monkes of Colchester three shillings, as long as they hold it or may haue it. But Philip of Leyburne, who afterwards confirmed them, speaketh plaine, 'Ipsis Monachis Colocestriæ duos solidos dabunt, sicut ipsi inter se composuerunt,' They shal pay two shillings to the Monkes of Colchester as they compounded amongst themselves, This then is no imposition, but a consent to a composition.

The Portion of Geddings giuen by Alan of Geddings, which gaue occasion to the confirmation of Richard the Archbishop,

198

hath this worthy obseruation, that then, Iohn the Parson of Hese, in which Parish is Geddings, keeping backe ten shillings, which by couenant & promise he was to pay to the Monks for that Tyth, was impleaded before the Archbishop: And there the Parson promised to remit his Parochiall claime, if one of the Monkes sollicitors would sweare for the trueth of such Couenants; which he doing, the Archbishop confirmed them to the Monkes. Obserue here that Parochiall claime, is only answered by pretence of couenant, not donation of a Patron.

The Portion of Stalesfeild, wherein is the clause 'Tenendam sicut tenerunt de Antecessoribus meis,' Must bee vnderstood, either for the condition, 'pro societate,' or 'pro anniuersario,' or for the Tenure, 'In puram & perpetuam Eleemosynam,' other sense I conceiue not.

The Portion of Westbroke in Culings, wherein the Patron seemeth to impose halfe a marke, is thus to be vnderstood: Radulphus Pincerna gaue the Tyth of that field: This Tyth was valued in 'Textus Roffensis' per annum at fiue shillings, now Adam Pincerna, willing to pleasure the Monkes, in respect of the loue his Ancestors shewed them, he and his brother, who was then Parson of Culings, desiring it for peace sake, Hee gaue consent to the value of halfe a Marke, to bee paid by way of composition.

The Portion of Hamwold: In this it is to be obserued, that the Patrons of this Portion, did obtaine the confirmation of the Prior and Couent of Leeds, to whom this Parsonage was appropriate; wherein the Prior and Couent of Leeds, euen confirmed the confirmations of the Archbishop: Nay after Nicholas Hacket the sonne, and Ralph his sonne, did sweare in the Chapter house at Leeds, for the indemnitie of the Parish Church, by their Chappell at Hamwold. Such was the interest of the Parsons through Parochiall right.

In the Portion of Edintune, the heire doth onely confirme a composition.

In the Portion of Wicham, before out of Gundulphus Char-

199

ter we see that it was of his owne Fee, And this, saith 'Textus Roffensis,' he gaue to Godfrey de Talebot, reseruing 'omnem Decimam omnium rerum ad opus Monachorum suorum, quam etiam dedit illis æternaliter possidendam.' Hamelinus de Columbiers, therefore made no new donation but confirmed the olde, as in the Chartularie euen quoted doth appeare, where in the controuersie betwene the Chaunter of Rochester, and the Parson of Frindesbury, the Tenants of Wicham swore, 'Cantoriam eam' (that is the small Tythes) 'antiquitus possedissee cum blado,' That they enjoyed them anciently, with the Tythe of

corne.

By which claimes of the Parson of Frindesbury, for the Portion of Wicham, the Parson of Hese for Geddings, the Parson of Eltham for Modingham, for so it runnes in the Charters, 'Decimas de Modingham quas disrationauerunt contra Picardum Personam de Eltham,' The Tythes of Modingham which they recouered against Picard Parson of Eltham (and all these before Anno 1200.) and the confirmations of Hamwold; I take it the practise of Parochiall Tything is plainly confirmed; for how else could the Parsons impleade the Monasteries for such portions issuing out of their Rectories? And because against them Couenants and prescription, and not donation of the Patron is objected, I may well coniecture in the opinion of the Parsons, that onely their predecessors could passe them for their time; or the Patron but at their pleasure.

But hee objects, that in the confirmation of Richard the Archbish, 23. of Henry the 2. (which he supposeth to be the first Confirmation, but he is deceiued, for both Archbishops, and Bishops of Rochester, and Adrian Pope of Rome had confirmed them) the Archbishop seemes to ground the right of the Monkes enjoying such portions, onely from the deedes of Lay-granters, 'Cognito lure prædictorum Monachorum, per inspectionem instrumentorum suorum, considerata etiam diuturna illorum possessione,' Knowing the right of the Monkes by sight of their instruments, and considering also their long possession. But these Instruments are as well (if not rather)

200

of Granters that are Ordinaries, as of Lay-Donors; as the confirmation of the Prior and Couent of Canterbury (whose Counsell hee tooke herein) before rehearsed, doeth testifie. Neither am I of opinion, that either the Bishop without the Donor to præiudice the Patronage; nor Donor without the Bishop to empeach the Iurisdiction; nor both without the Incumbent to empaire the Maintenance, could doe any valide Acte in such conueyance. And this may also serue to satisfie the phrase of Hubert the Archbishops Confirmation.

And so much out of the Records of the Church of Rochester: by which it appeares, that all their portions were at the first confirmed and granted by the Bishops: that the first, were by consent of Incumbents; that Parochiall right was claimed against them; that Patrons onely intermeddled not to make, but consent to compositions of Tythes. How then . . .

210

Yet heere out of our Records, let mee tell him, that Anno 1255. the Prior and Monkes of Rochester, and the Prior or Warden of their Cell at Filchstow in Walton in the Diocese of Norwich, did present one Stephen Banaster to the Church of Tremlegh, 'Officiali tunc vices Episcopi Norwicensis gerenti,' whom the Officiall instituted; and yet Iohn the Bishop thereof before, had in his confirmation said 'Ecclesiam de Tremblega pleno lure cum omnibus pertinentibus pertinere ad Priorem & Monachos de Waleton;' That the Church of Trembleigh did belong 'Pleno lure' to the Monkes of Walton. But I conceiue therin, 'pleno lure' rather to be distinguished from 'non per vices,' or, 'non ex compræsentatione alterius,' then otherwise; though I contradict not the opinion of the Canonists, who say, a conueyance of Churches 'pleno lure,' to be of the right of Institution and Destitution, . . .

211

In the Chartularies of the Priory of Leeds, obserue, how

in the Appropriation by Theobald Archbishop of the Church of Eslings in the Diocesse of Canterbury, it is thus; 'Rogauit nos Alicia de Eslings, quæ fuit vxor Radulfi de Cicestria, vt Ecclesiam de Eslings, quæ in fundo eius sita est, Monasterio & Canonicis Regularibus de Leeds, in perpetuam eleemosynam concederemus, nam & illa, quantum ad se spectabat, in præsentia nostra, temporalia iis perpetualiter concessit;' Alice of Eslings, that was the wife of Ralfe of Chichester, entreated vs, that I would graunt to the Monasterie, and Canons Regular of Leeds, in perpetuall Almes, the Church of Eslings, which is founded in her lands: for she, in what appertained to her, in our presence, gaue the Temporalities for euer. And then vp=

212

on Resignation of the Incumbent, he doeth Canonically inuest them with it. All the rest are such like. . . .

214

. . . if this pension (which is most likely) was paide to them before, for, 'the making faith,' both to Bishop and Couent for such performance was vsuall, many are extant in our Registers. And in the confirmation of Bishop Gilbert Glanuill to his Monasterie, obserue these words, when hauing expressed many pensions, he addeth, 'Et ne in prætaxatis pensionibus percipiendis possit aliquod præiudicium dictis Monachis imminere, vel difficultas soluendi: Volumus & firmiter constituimus — vt omnes Rectores a nobis in eisdem constituti, vel a nobis & Successoribus nostris in perpetuum instituendi, de pensionibus prædictis fideliter & sine difficultate persoluendis, ipsis Monachis in Capitulo suo fidelitatem faciant præstito Sacramento, &c.' And least in the receiuing the foresaid pensions any preiudice may arise to the Monkes, or difficultie of payment, wee will and firmly ordaine — that all Parsons placed therein, by vs or our successours for euer, shall take an oath of fidelitie in the Chapter house, to pay the said pensions, faithfully and readily. . . .

222

But to that let mee adde some out of our Chartularies.

In the confirmation of William Archbishop 1131. There it is said, 'Decimas de Modingham, de quibus per Rectorem de Eltham, coram nobis fuerint impetiti propterea ex consilio & assensu Iurisperitorum nobis assidentium iisdem Monachis adiudicamus.' The Tythes of Modingham about which they were impleaded before vs by the Parson of Eltham, wherfore by the Counsel and assent of our Lawyers assessors with vs in the businessse, we adiudge them to the same Monkes. This in the dayes of Henry the first.

So Theobaldus in the confirmation to the Priorie of Leeds, 'præcipue Decimam de Summerfelda quam in Synodo Cantuariæ ante nostram præsentiam in iudicio dictus Prior disrationauit,' Especially the Tythes of Summerfeld which in a Consistorie at Canterbury, the same Prior before our presence did euict.

So Richard Archbishop made his confirmations vpon occasion of the suite before him, for the Portion of Geddings.

Some others might be produced . . .

<Richard Tillesley (1582–1624) was appointed to the archdeaconry of Rochester in 1614, and to a prebend in the cathedral church at about the same time; he held both appointments till his death. He was the author of one book – a critique of John Selden's 'History of tithes' (1618). Looking for ammunition to use against Selden, Tillesley made a search of the Rochester archives. As archdeacon, he had access to the records of the bishopric; as prebendary, to the records of the dean and chapter (which, in addition to those inherited from the prior and convent of Rochester, included the archives of two other suppressed houses, Leeds priory and Strood hospital). Written and printed in haste, his book came out in 1619. (A second edition, much enlarged, was published two years later.) It has, by now, acquired a significance which the author could not foresee, because some of the documents cited by Tillesley have gone missing since his time. This file contains all the passages (except for a few glancing remarks) which mention documents from Rochester. (Further comments will be found at the end of the file containing excerpts from the second edition.) – C.F. November 2010.>