

## ENGLAND.

## APPEAL FROM THE COURT OF CHANCERY.

EAST INDIA COMPANY—*Appellants.*ANTROBUS—*Respondent.*

Dec. 14, 1812.

TITHES IN  
LONDON.

**BILL** filed for tithes in London, at 2s. 9d. in the pound, under 37th Hen. 8, cap. 12, in respect of buildings belonging to the East India Company. No present rent paid;—rents and tithes paid at various times since 1660, for some of the buildings that formerly stood on the site of the present buildings, set forth; and, as to other former buildings, no rents, nor payments of tithes, could be shown. No specific invariable customary payments alleged, and none of the stated payments carried up to time of Act 37 Hen. 8, cap. 12. Decreed, that these messuages, warehouses, &c. ought to pay 2s. 9d. in the pound, according to improved value; and this affirmed in the last resort upon appeal.

Bill filed Oct.  
31, 1801.

**THE** Respondent, as Rector of the parish of St. Andrew Undershaft with St. Mary Axe annexed, filed his bill against the Appellants for the recovery of tithes for certain messuages and premises held and occupied by them within the said parish.

The bill, after stating the title of the Respondent, recited the decree of the Archbishop of Canterbury, of the 23d of February, 1545, ordering payment of tithes by the citizens of London, at the rate of 2s. 9d. in the pound; and the statute 37th Henry 8, cap. 12, pursuant to which that decree was made. It then stated that the East India Company, before, in, and since the year 1800, had been, and then were, in possession of certain

messuages in the said parish, and prayed for an account, and payment after the rate mentioned in the act and decree.

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Answer.

The answer stated that no rent was reserved for the buildings and premises in their occupation, but that rent had been paid for some other buildings which formerly stood on part of the ground on which the buildings occupied by them had been erected; that they had, in a schedule annexed to their answer, set forth an account of the several rents, as far as they had been enabled to ascertain them, to show that less sums had been accustomed to be paid than after the rate mentioned in the act and decree; and that rents might have been reserved for all the houses, &c., which had before stood on all the other parts of the ground on which the buildings now occupied by the Appellants were at present situate; but that they neither knew nor admitted the same, and left the Respondent to bring such proof thereof as he could. The answer then stated in detail such rents and tithes as had been paid for the old East India House, in 1660, and for all the buildings subsequently purchased, at various times, that stood on the site of the present East India House, and premises in the said parish occupied by the Appellants, as far as they knew the same. And the Appellants further stated, that, to the best of their knowledge and belief, less sums than after the rate aforesaid had been accustomed to be paid for the houses, &c., which had formerly stood on the site of their present premises; and they submitted that they were therefore entitled to the

Less sums than after the rate of 2s. 9d. in the pound alleged to have been accustomed to be paid for houses which formerly stood on the site of the present buildings.

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No specific invariable customary payments alleged, and none of those stated carried so far back as 37 H. 8.

July, 1806. Decree ordering payment at rate of 2s. 9d. in the pound, according to improved value.

Appeal.

But no specific, constant, uniform, customary payments were alleged, and none of the payments stated were carried so far back as the date of the act and decree.

The cause came on to be heard before the Master of the Rolls, who, on the 21st of July, 1806, made a decree declaring that the Respondent was entitled to tithes after the rate of 2s. 9d. in the pound on the annual value of the messuages, warehouses, &c., in the pleadings mentioned; and ordered a reference to the Master to ascertain such annual value, &c.

From this decree the Appellants appealed, contending that, according to the true construction of the Act 37 Henry 8, cap. 12, the Respondent was entitled only to such less sums than 2s. 9d. in the pound as had been accustomed to be paid; or, at least, that an issue ought to be directed to try the question as to such customary payments: that where the last rents of houses formerly standing on the site of the present buildings were known, but no customary payments proved, the tithe ought to be calculated according to the last known rent, and not upon the improved value; and that, where no last rents were known, no tithe ought to be paid.

*The Lord Chancellor.* Suppose several houses pulled down, some of them exempt for customary payments, others not, and one house built instead; how was that house to pay? Was there any case?

*Mr. Leach* believed the point had occurred in a late case at the Rolls, (not reported,) *Bramston v. Flabber*. An issue was directed to try whether, under these circumstances, any customary payments could be sustained as to the new house, and the verdict was against the customary payments.

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(N. B. It afterwards came out that the point had not been there decided, as it appeared at the trial that the new house had actually paid at the rate of 2s. 9d. in the pound on the value.)

*Lord Eldon*, (Chancellor,) after a review of the enactments in the statute, and of the cases decided under it, stated it to be his opinion, that where no rent was shown the payment must be according to the value; and as to the pleadings, it was not sufficient to say that less sums than 2s. 9d. in the pound had been accustomed to be paid, but it was necessary to allege what those payments were, without throwing the burthen of proof on the clergyman: and if that was the case in regard to a single house, it was so much the more so in regard to this mass of houses. He was of opinion, upon the pleadings alone, that the judgment of the Court below was correct. (*Vide* 13 Ves. 9, and cases there cited.)

March 22,  
1813.  
Judgment.

Decree of Court below *affirmed*.

Agent for Appellants, SMITH.

Agent for Respondent, TILSON.

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Two other appeals, one from the Court of Exchequer, (*East India Company v. Wightwick*), the other from the Court of Chancery, (*East India Company v. Johnes*), respecting certain premises belonging to the Company in the parishes of St. Botolph, Aldgate, and Allhallows, Barking, in which similar judgments had been given in the Courts below, were heard at the same time, and the decrees likewise *affirmed*.