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shown to be bad or doubtful, and when it is so shown to make an allowance in the year in which its diminution in value is thus justified.

Admittedly, so much of the sum as consists of interest must be separately accounted for as and when each portion becomes due. No doubt, if this course be followed and if a building owner goes out of business, he may suffer some hardship inasmuch as there is in that case no future year iu which he can be given an allowance in cases where the debt proves bad or doubtful after his business activities have ceased. On the other hand, if a debt has been written down before he retires and is afterwards paid in full, he will receive a windfall in the shape of a payment which is subject to no tax. However that may be, I find myself in agreement with the noble Viscount on the woolsack, and would dismiss the appeal in the present case for the reasons set out above which are not dissimilar to, though not quite identical with, those which influenced the Court of Appeal.

Appeal allowed.

Solicitors for appellant : *Claude Barker & Partners.*
Solicitor for respondent : *Solicitor of Inland Revenue.*

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[HOUSE OF LORDS.]

REPRESENTATIVE BODY OF THE CHURCH IN WALES . . . . APPELLANTS;
AND
TITHE REDEMPTION COMMISSION AND OTHERS . . . . . RESPONDENTS.

PLYMOUTH ESTATES, LIMITED . . APPELLANTS;
AND
SAME . . . . . RESPONDENTS.

Ecclesiastical law—Church in Wales—Tithe rentcharge—Vesting in Commissioners of Church Temporalities in Wales—Former vesting in Ecclesiastical Commissioners for England—"Lay impropriator"—Liability to repair chancels—Welsh Church Act, 1914 (4 & 5 *Geo.* 5, *c.* 91), *s.* 28, *sub-s.* 1.

By s. 28 of the Welsh Church Act, 1914: "(1.) Nothing in this "Act shall affect any liability to pay tithe rentcharge, or the "liability of any lay impropriator of any tithe rentcharge to repair "any ecclesiastical building, but a county council shall not, by "reason of being entitled to or receiving any tithe rentcharge "under this Act, be liable for the repair of any ecclesiastical "building. (2.) Such liability as aforesaid of a lay impropriator "may be enforced in the temporal courts at the instance of the "representative body in like manner as if such liability arose under "a covenant made with the representative body and running with "the tithe rentcharge,"

On the disestablishment of the Welsh Church certain tithe rentcharges, formerly vested in the Ecclesiastical Commissioners for England, became vested in the Commissioners of Church Temporalities in Wales, being ultimately transferable by them to the University of Wales by virtue of the provisions of the Welsh Church Acts, 1914 and 1919. A summons was taken out by the Tithe Redemption Commission to determine whether these tithe rentcharges were immediately before October 2, 1936 (the date under the Tithe Act, 1936, for the extinguishment of tithe rentcharge), vested in the Welsh Commissioners subject to or freed from the liability for the repair of chancels of churches to which they were subject or gave rise immediately before the vesting thereof in the Welsh Commissioners :—

Held, that the University of Wales, when it came to own the tithe rentcharge, which but for the Tithe Act, 1936, would have been transferable to it, would then have been a "lay "impropriator"; that, consequently, under the provisions of s. 28 of the Act of 1914, it would have been under the obligation of chancel repair; and that the Welsh Commissioners, while the tithe rentcharge was vested in them, were under a similar obligation.

Decision of the Court of Appeal (sub. nom. *Tithe Redemption Commission* v. *Commissioners of Church Temporalities in Wales* [1943] Ch. 183 reversed.

APPEAL from the Court of Appeal.

The facts stated by VISCOUNT SIMON L.C. were as follows:—The Welsh Church Acts, 1914 and 1919, provided for the disestablishment and partial disendowment of the Church in Wales, and the date of disestablishment was finally fixed at March 31, 1920. At that date every cathedral and ecclesiastical corporation of the Church in Wales, whether sole or aggregate, was dissolved, and by s. 3, sub-s. 1, of the Act of 1914 ecclesiastical courts and persons in Wales ceased to exercise any jurisdiction, and the ecclesiastical law of the Church in Wales ceased to exist as law. The method by which the partial disendowment was to be carried out was to vest in the Commissioners of Church Temporalities in Wales (hereinafter called "the Welsh Commissioners")—a statutory body created by s. 10 of the Act of 1914 and originally intended to be dissolved at

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the end of 1917—as from the date of disestablishment all Welsh ecclesiastical property of every kind : s. 4 of the Act of 1914; and then to impose on the Welsh Commissioners the duty of distributing various types of property to their prescribed recipients—on the one hand, to the Representative Body of the Church in Wales (hereinafter called "the Representative "Body"), which represented the disestablished church, and, on the other hand, to two classes of lay recipients, the Welsh county councils and the University of Wales, according to the nature and incidents of the property taken from the Church. Broadly speaking, the Welsh Commissioners were, by s. 8, sub-s. 1, of the Act of 1914, to transfer to the newly-created Representative Body all churches and ecclesiastical residences, all restoration funds and property derived from Queen Anne's Bounty, and all private benefactions, which last were defined by s. 7, sub-s. 2, to include gifts and the like made to the Church in Wales since the year 1662. It appeared from s. 4, sub-s. 2, of the Welsh Church (Temporalities) Act, 1919, that among the property that might come to be transferred to the Representative Body was certain tithe rentcharge—presumably arising from private benefaction—but this was quite exceptional. The great bulk of "tithe rentcharge in Wales, after vesting at disestablishment in the Welsh Commissioners, was to be transferred in due course either to the Welsh county councils or to the University of Wales according to the following rule. Out of the property not transferred to the Representative Body, the Welsh Commissioners were to "transfer "any tithe rentcharge which was formerly appropriated to the "use of any parochial benefice to the council of the county in "which the land out of which the tithe rentcharge issues is "situate" : s. 8, sub-s. 1 *(c)*, but tithe rentcharge which was not formerly appropriated to the use of any parochial benefice, but none the less vested in the Welsh Commissioners as from the date of disestablishment as being Welsh ecclesiastical property (such as was tithe rentcharge in Wales formerly owned by the Ecclesiastical Commissioners), was to be transferred by the commissioners to the University of Wales. In addition to the two varieties of tithe rentcharge mentioned above, there was also a third kind of tithe rentcharge the title to and devolution of which was not affected by the Welsh Church Acts at all. This was tithe rentcharge which had long ceased to belong to the Church and which at the time of the dissolution of the monasteries or later had by royal grant or

otherwise come into the possession of lay owners. . Generally speaking, down to the time of the disestablishment of the Church, an owner of any kind of tithe rentcharge in Wales was, in virtue of that ownership, under a personal obligation to maintain or to contribute to maintaining the chancel of the church from whose parish the tithe rentcharge was derived. The Tithe Act, 1936, extinguished all tithe rentcharge, whether in England or Wales, from October 2, 1936 (s. 1), and authorized the issue of tithe redemption stock for the compensation of the persons interested in a tithe rentcharge in respect of its extinguishment (s. 2). The Act created a body called the Tithe Redemption Commission to carry out the purposes of the Act, and by s. 31, sub-s. 2, it was provided that : "In respect of the "liability to repair arising from the ownership of a tithe "rentcharge extinguished by this Act in respect of which "stock is to be issued under this Act, the Diocesan Authority" (which in the case of Wales meant the Representative Body) "shall be entitled to receive a part of the stock to be issued in "respect of the rentcharge equal to such a sum . . . . as "may be reasonably sufficient, having regard to the condition "of the chancel or building at the appointed day, to provide "for the cost of future repairs thereof, and to provide a capital "sum the income of which will be sufficient to insure it against "destruction by fire." . Where two or more owners of rentcharges were involved in the liability to repair the same building, the Act provided for the apportionment of the stock issuable to the Representative Body from the two or more sources (sch. VII).

By an originating summons, dated May 19, 1942, to which the Welsh Commissioners, the Representative Body, Plymouth Estates, Ld., and the University of Wales were defendants, the Tithe Redemption Commission asked : "(1.) That it may be "determined whether, upon the true construction of the Welsh "Church Acts, 1914 and 1919, the tithe rentcharges which "were formerly vested in the Ecclesiastical Commissioners "for England, and which, if the Tithe Act, 1936, had not been "passed would have been transferable to the University of "Wales under the Welsh Church Acts, 1914 and 1919, by the "defendants, the Commissioners of Church Temporalities in "Wales, became under the said Acts and were immediately "before October 2, 1936, vested in the said defendants, the "Commissioners of Church Temporalities in Wales :— "(0) subject to the liability for the repair of chancels of

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" churches to which they were subject or gave rise immediately " before the vesting thereof in the said defendants, or (6) freed " from the liability aforesaid. (2.) That the defendants, the " Plymouth Estates, Ld., may be appointed to represent lay " impropriators (within the meaning of s. 28 of the Welsh " Church Act, 1914), not parties to the action, of tithe rent-" charges payable in respect of lands in parishes which included " lands subject to tithe rentcharges of the nature specified in " para. I of this summons." The secretary of the Tithe Redemption Commission swore an affidavit setting out the facts relating to the parish of Llantwit Major in the county of Glamorgan : " The rectory of that parish had before the dis-" solution of the monasteries been appropriated and belonged " to the abbey of Tewkesbury. One part of the rectorial tithe " afterwards became vested in the Earl of Lincoln and the " other part in the Dean and Chapter of Gloucester. On " commutation in 1842 under the Tithe Acts, tithe rentcharges " amounting to 70*l.* were awarded to the trustees of Robert " Henry Clive and his wife, presumably the successors in title " to the Earl of Lincoln, and tithe rentcharges amounting to " 481*l.* 7*s.* 11*d.* were awarded to the Dean and Chapter of " Gloucester and their lessees. These capitular tithe rent-" charges amounting to 481*l.* 7*s.* 11*d.* became vested in the " Ecclesiastical Commissioners for England and, by virtue of " the orders hereinbefore mentioned, were Welsh Ecclesiastical " property. The said tithe rentcharges amounting to 70*l.* " had prior to October 2, 1936, been reduced by redemption to " tithe rentcharges amounting to 64*l.* 4*s.* *zd.* which were then " vested in the third-named defendants, the Plymouth " Estates, Ld., as lay impropriators." Bennett J. held that the Welsh Commissioners were not " lay impropriators " within s. 28, sub-s. I, of the Welsh Church Act, 1914, and that, therefore, the tithe rentcharges in question were immediately before October 2, 1936, vested in them freed from the liability for chancel repair. The Court of Appeal (Lord Greene M.R., Luxmoore and Goddard L.JJ.) affirmed this decision. The Representative Body and Plymouth Estates, Ld., appealed to the House of Lords.

Sir Walter Monckton K.C., R. Gwyn Rees and *B. McKenna* for the appellants, the Representative Body of the Church in Wales. By reason of their ownership of the tithe rentcharge now in question (that which was transferable to the University

of Wales), the Ecclesiastical Commissioners were liable for chancel repair and prima facie after the date of disestablishment the liability passed to the Welsh Commissioners where tithe rentcharge vested in them by virtue of the Welsh Church Acts. The onus of proof is on those seeking to displace that liability. The Ecclesiastical Commissioners and the Welsh Commissioners are " lay impropriators " within s. 28, sub-s. 1, of the Act of 1914, as the term was then understood, and, accordingly, that section alone is sufficient to preserve the liability to chancel repair in respect of the university tithe rentcharge. Unless the person holding tithe rentcharge is a spiritual person or a corporation having the cure of souls that person is a lay impropriator. This marks the distinction between " appro-" priation " and " impropriation." The former was the annexation of tithes to a spiritual person or a corporation of spiritual persons having the cure of souls, while the latter was the annexation of tithes to other persons. Before the dissolution of the monasteries tithes could only be owned by spiritual persons : see *Grendon* v. *Bishop of Lincoln* (1). The distinction between spiritual and lay ownership depends on the character and functions of the owner : see Phillimore on Ecclesiastical Law, 2nd ed., vol. L, pp. 219–20 ; vol. II, p. 1,588 ; Cripps on Church and Clergy, 8th ed., p. 95 ; Blackstone's Commentaries Book I, c. 18, 1st ed., p. 458 ; II Halsbury's Laws of England, 2nd ed., p. 844, para. 1,537, and the definition of " impropriate " in the Oxford English Dictionary. Neither the Ecclesiastical Commissioners nor the Welsh Commissioners are anything but lay impropriators in ordinary language. Where, as in the case of s. 28, sub-s. 1, the legislature preserves a liability imposed by the common law and by ecclesiastical law on the members of a certain class and also by the same Act adds another member to that class (in this case the Welsh Commissioners) there is no rule of construction which compels the court to hold that member exempt from the liability preserved in respect of the class. There is nothing in the wording of s. 28, sub-s. 1, to suggest that any transferee of tithe rentcharge under the Act is not included in the words " any lay impropriator." If the words do not go so far as to include any transferee, whether created by the Act or not, there can be no point in the express exemption of the county councils. Lord Greene M.R., in rejecting the appellants' argument, said (2) that it was unlikely

(1) (1575) Plow. 493. 495. 496. (2) [1943] Ch. 183, 191.

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that the legislature intended the words of s. 28 to cover "conveyancing acrobatics of such a complicated and artificial "kind," but the intention of the section was to preserve the liability of lay impropriators and the plain words of the Act should not be cut down. The only difficulty is that the machinery applied to the unrealities of the transition may look fantastic. During the interval in which the tithe rentcharge vests in the Welsh Commissioners they are the legal owners and there is no reason to differentiate them from other owners of tithe rentcharge even though the property must ultimately go to the University of Wales. The ultimate recipients are also lay impropriators within s. 28 and as such subject to the liability to repair chancels. The construction of the Acts adopted by the Court of Appeal would involve the conclusion that the liability to chancel repair by a lay impropriator of rectorial property other than tithe rentcharge is abolished, although that liability is expressly preserved by s. 28 in the case of a lay impropriator of tithe rentcharge. Apart from these considerations, the liability to chancel repair was not part of "the ecclesiastical law of the Church in Wales" within the meaning of s. 3, sub-s. 1, of the Act of 1914, and, accordingly, was not abolished by that section. Tithe law was part of the general law of the land. The Tithe Act, 1891, gave the county courts jurisdiction with regard to the recovery of tithe rentcharge (s. 2). Till the Chancel Repairs Act, 1932, s. 1, the ecclesiastical courts had power to enforce the repair of chancels, but in s. 3 of the Act of 1914 "ecclesiastical law" is not used in a sense wide enough to cover the repair of chancels. The fact that the Act made no express provision for a tribunal to take the place of the spiritual court in enforcing chancel repair is not conclusive, for by s. 18 *(g)* of the Act of 1914 the liability "to repair any ecclesiastical building" was expressly kept alive. Perhaps the Attorney-General might have dealt with the matter as a public right. Part I of the Act deals with "disestablishment," that is the freeing of the Church in Wales from State control in doctrine, government and discipline. These properly came within the scope of ecclesiastical law: see Phillimore on Ecclesiastical Law, 2nd ed., vol. I, p. 10, and Sweet's Law Dictionary, p. 305. There is a recognized distinction between matters such as these and the question of the repair of chancels.

Wilfrid Hunt for the appellants, Plymouth Estates, Ld. The Welsh Church Acts on their true construction do not

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exclude the passing of the liability to chancel repair to the Welsh Commissioners. Even if, contrary to the appellant's submission, any provision taken by itself were capable of such a construction, that construction should not be adopted because it would involve casting the whole burden of the liability on lay impropriators in the position of Plymouth Estates, Ld., without any right of contribution, besides abolishing without compensation the right of contribution previously existing. "An intention to take away the property of a "subject without giving him a legal right to compensation for "the loss of it is not to be imputed to the legislature unless "that intention is expressed in unequivocal terms": *Central Control Board (Liquor Traffic)* v. *Cannon Brewery Co., Ld,* (1). Such was not the policy of the Acts for the Act of 1914 by s. 8, sub-s. I (iii.) preserved the endowments of the Church in Wales.

Rewcastle K.C. and *Beebee* for the respondents, the Commissioners of Church Temporalities in Wales and the University of Wales. The summons follows sch. VII to the Tithe Act, 1936: see also s. 31, sub-ss. 2 and 3, of that Act. The practical question is whether under the Welsh Church Acts, 1914 and 1919, the tithe rentcharge which would have been transferable to the University of Wales, but which is still vested in the Welsh Commissioners, ceased before October 2, 1936, to be subject to chancel repair liability or not. The answer must depend on whether, by reason of s. 3 of the Act of 1914, under which the ecclesiastical law of the Church in Wales ceased to exist as law, the Welsh Commissioners never came under the liability to chancel repair or whether they are to be regarded as lay impropriators so that s. 3 does not apply to them and they are under chancel repair liability by reason of s. 28 of the Act. Liability to chancel repair was a creation of ecclesiastical law only, and was enforceable only in the ecclesiastical courts. Whatever is the full scope of the words "ecclesiastical law" in s. 3 of the Act of 1914, they cover that part of the law which dealt with the repair of chancels since that liability came directly out of it alone and in 1914 had never been dealt with by any other law. By s. 3 of the Chancel Repairs Act, 1932, the jurisdiction of ecclesiastical courts to enforce repair of chancels was transferred to the county courts. There is no authority to suggest that before that Act the liability was capable of being enforced otherwise than in the ecclesiastical courts. In those courts there was no means of obtaining any

(1) [1919] A. C. 744, 752.

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judgment for money. If a person received tithes and failed to discharge his liability to chancel repair he might be admonished on a cause of office that his soul might not be jeopardised, but, if he proved contumacious, such a process could not have produced either payment of money or the execution of work on the chancel. The liability was a personal one and did not depend on the amount of tithe received, nor was it a charge on it. Otherwise it could have been avoided by transferring the tithe rentcharge from one person to another with sufficient frequency. The person liable is the legal owner : see *Wickhambrook Parochial Church Council* v. *Croxford*(1). This liability, being rooted in ecclesiastical law, was destroyed by s. 3. Unless this was so, there would be no point in the saving affected by s. 28, for there was nothing else in the Act to call for such a provision. But for the terms of s. 28 it would be clear that the chancel repair liability of every holder of tithe rentcharge had disappeared. The meaning of the term " lay " impropriator " in s. 28 can only extend to cover persons and corporations other than the Ecclesiastical Commissioners, the Welsh Commissioners, the University of Wales and the county councils. The section, which is contained in part IV of this Act under the heading " Supplemental," is expressed to be a saving clause and on the true construction of the Act as a whole it must be taken to refer only to lay owners of tithe rentcharge as private property which at the date of disestablishment formed no part of the endowments of the Church in Wales. The property was, therefore, outside the scope of the Act, and, but for s. 28, the owners would have received fortuitous benefit from chancel repair liability in consequence of s. 3 which abolished ecclesiastical law in Wales. Accordingly, s. 28 can have no application to this case and the question of chancel repair liability does not arise. There were no lay impropriators before the dissolution of the monasteries when the Crown took some parts of church property and handed it over by Act of Parliament to divers persons as their private property for their private benefit. These were the first " lay impropriators " and the term was a term of art applicable to a particular field of ecclesiastical law. From the dissolution of the monasteries its meaning was quite definite and well recognized, indicating a person who had in his hands property which was formerly church property devoted to spiritual purposes and which was now his private property so that he was free to deal with it as

(1) [1935] 2 K. B. 417.

he chose : see Phillimore on Ecclesiastical Law (2nd ed.), vol. I, p. 220. Ayliffe's Parergon, p. *go,* indicates that only a limited number of persons and their successors in title are properly described as lay impropriators. That is the true test whether or not a person is a lay impropriator, and it does not really depend on whether or not the holder of tithe rentcharge is an ecclesiastical person or body. Otherwise there would be no reason for the provision in s. 38, sub-s. 4, of the Act of 1914. For a person to be a lay impropriator it is not necessary that he should be a layman, e.g., Archbishop Cranmer, was a lay impropriator of gifts of church property made to him for his own personal use, but the term " lay impropriator," having a normal intelligible meaning, should not be extended or strained in the Act. It is inapplicable to the Ecclesiastical Commissioners, for, when they came into possession of church property, it was not lost to the Church or diverted from it, but was transferred to them that it might be the more efficiently used for the purposes of the Church through part of its organization. Moreover, the term is only appropriate to a continuing lay impropriator, and in consequence of the Act, which took the property away from them, the Ecclesiastical Commissioners must in any event cease to be lay impropriators within the meaning of the Act. The Welsh Commissioners are not " lay impropriators." They derived no benefit from the property transferred to them which was not lost to the Church and it would be contrary to the policy of the Act to impose on them a liability such as this. The words used in s. 28, sub-s. I, are " affect any liability." " Affect " means " make a " change in." Accordingly, the section cannot apply to a body created by the Act. In this connexion the test is, not whether a person or corporation came into possession of the tithe rentcharge after the passing of the Act, but whether it was in consequence of the Act. The University of Wales and the county councils cannot be lay impropriators, for they do receive the property, not for their own purposes, but to apply it as the Act directs to certain charitable and eleemosynary purposes. As regards the county councils, s. 28 is merely declaratory of what the position would have been without it. The mention of them was made ex abundanti cautela. In the circumstances in which the Act was passed, it was intended to make it perfectly clear to the county councils, which were bitterly opposed to performing any ecclesiastical functions, that they were not liable for chancel repair. As regards the

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University of Wales, it would be strange if one class of lay impropriators, the county councils, were excluded from liability and at the same time, for no clear reason, the university, through the Welsh Commissioners, were left under that very liability. The matter is carried no further by ss. 4 and 8 of the Act of 1914. Under s. 4 there is no expression apt to impose the liability to chancel repair on the newly-constituted Welsh Commissioners. If the right of the Church to require such repairs be saved at all it is saved by s. 28.

W. F. Waite for the Tithe Redemption Commission.

Sir Walter Monckton K.C. in reply. Unquestionably, the University of Wales falls within the meaning of "lay "impropriator" in s. 28 by reason of the maxim expressio unius est exclusio alterius. The Welsh Commissioners are none the less "lay impropriators" because they owe their origin to this Act. The fact that they do not get the property for their own benefit is not relevant: see *Wickhambrook Parochial Church Council* v. *Croxford* (1).

The House took time for consideration.

May 24. VISCOUNT SIMON L.C. My Lords, the practical importance of the question raised by the originating summons is clear. The tithe rentcharge which was vested in the Welsh Commissioners with a view to its being transferred to the University of Wales has been extinguished. When the Tithe Redemption Commission determines the amount of stock to be issued for compensation in respect of the extinguishment of any such tithe rentcharge, are the Welsh Commissioners entitled to receive the whole of such stock with a view to transferring it to the University of Wales, or does there attach to the ownership of the tithe rentcharge which has been extinguished a liability to chancel repair, with the result that the Representative Body will be entitled to receive so much of the stock as is needed to provide for this repair hereafter, while only the residue of the stock goes to the Welsh Commissioners for transfer to the university? To determine this issue, it is necessary to look at the situation as it existed just before the extinguishment of the tithe rentcharge.

To illustrate the nature of the question to be determined, the secretary of the Tithe Redemption Commission swore an affidavit bringing to the notice of the court the facts relating to the parish of Llantwit Major in the county of Glamorgan.

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Since the rentcharges belonging to the Dean and Chapter of Gloucester were not appropriated to the use of any ecclesiastical benefice, they were rentcharges of the kind which the Welsh Commissioners under the Act of 1914 were required to transfer to the University of Wales, and in this particular illustration the question is whether these tithe rentcharges, valued at 481*l.* 7*s.* 11*d.*, are, after the date of Welsh disestablishment, accompanied by a liability for chancel repair. Plymouth Estates, Ld., on the other hand, plainly and admittedly remain liable for chancel repair, for their tithe rentcharges, amounting to 64*l.* 4*s.* 2*d.*, are not Welsh ecclesiastical property and their situation is not altered by disendowment. Plymouth Estates, Ld., are, therefore, interested in this litigation because, if the decision of the courts below stands, they will have lost a previous contributor towards chancel repairs, and will be left as the only party against which a claim in respect of chancel repairs could be made. It is not necessary for the purposes of the present appeal to discuss the difficult question of the extent of their possible responsibility, or whether *Wickhambrook Parochial Church Council* v. *Croxford* (1) was rightly decided.

The section of the Welsh Church Act, 1914, on which, in my opinion, the matter chiefly turns is s. 28, which provides as follows: "(1.) Nothing in this Act shall affect any liability "to pay tithe rentcharge, or the liability of any lay impropriator "of any tithe rentcharge to repair any ecclesiastical building, "but a county council shall not, by reason of being entitled "to or receiving any tithe rentcharge under this Act, be liable "for the repair of any ecclesiastical building (2.) Such liability "as aforesaid of a lay impropriator may be enforced in the "temporal courts at the instance of the representative body in "like manner as if such liability arose under a covenant made "with the representative body and running with the tithe "rentcharge." The Court of Appeal have reached their decision on the view that "any lay impropriator" in this section does not include either a county council or the university to whom tithe rentcharge is transferred. Equally, in their view, the Welsh Commissioners themselves who were vested with tithe rentcharges are not lay impropriators. The argument is that, since ecclesiastical courts and ecclesiastical law ceased to exist as law as from the date of disestablishment, and since the Welsh Commissioners, as well as the county councils and the university

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would not be affected by the covenant imposed on members of the Church in Wales under sub-s. 2 of s. 3, all liability for chancel repairs ceased in connexion with tithe rentcharge vested by the Act in the Welsh Commissioners. According to this view, owners of tithe rentcharge in the position of Plymouth Estates, Ld.., are the only class of owners to be regarded as lay impropriators, and their liability is preserved by sub-s. 2 of s. 28.

I question the correctness of the view that liability for repair of a church in this country depended solely on ecclesiastical law such as was ended in Wales by s. 3 of the Act. Tindal C.J. points out in the elaborate judgment of the Exchequer Chamber in *Veley* v. *Burder* (1), with numerous citations of ancient authority, that it was by the common custom of England (that is, by the common law), that, in contrast with most of Christendom, the liability was divided. It anciently rested on the parishioners to repair the body of the church, but on the parson to repair the chancel. There is abundant ancient authority that the obligation of a rector to repair a chancel was an obligation imposed by common law, e.g., Comyns' Digest, Esglise G. 2 ; Coke, 2 Inst. 489 ; Ayliffe's Parergon 455. The enforcement of the obligation was usually in the spiritual courts, by process of monition, but *Nicholson* v. *Masters* (2) (cited in Burn's Ecclesiastical Law, vol. I, p. 414), seems to support the view that, if the churchwardens were put to the expense of doing the repairs, in case of default they could recover the amount as money paid in the temporal courts. It is not, however, necessary to pronounce finally on these niceties in order to reach a conclusion on this appeal. Even if s. 3, standing alone, had so wide an effect as the Court of Appeal assume, it still remains to construe and apply s. 28, which on that view operates as a restricting or saving clause.

Mr. Rewcastle contends that in this section the phrase " any " lay impropriator " does not include either the Welsh Commissioners themselves, in whom the tithe rentcharges are vested for purposes of redistribution, or either of the lay recipients to one or other of whom these rentcharges were to be transferred by the commissioners, viz., the county councils and the university. On this view the only persons covered by the phrase would be persons in the position of Plymouth Estates, Ld., i.e., owners of rentcharges, the title to which has not been affected or altered by the Act at all because such rentcharges before the passing of the Act were no part of Welsh ecclesiastical

(1) (1841) 12 A. & E. 265. (2) (1713) Unrep.

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property: There is no definition of " lay impropriator " in the Act of 1914, and the only other place where the words are found in the Act is in s. 38, sub-s. 4, where, for removing doubts, it is " declared that the principal or other member of " Jesus College, Oxford, who may from time to time be rector " of Llandyssil, shall as such be treated as a lay impro- " priator and not as the holder of an ecclesiastical office."

We have, therefore, to ask ourselves (a) What does " lay " impropriator " in its ordinary sense mean ?, and *(b)* Is there anything in s. 28 which throws light on its meaning in that section ? As to (*a*) a lay impropriator in its ordinary sense is a lay person or corporation who is in possession of the revenues of a living : Ayliffe's Parergon, pp. 86, 90 ; Phillimore's Ecclesiastical Law, 2nd ed., vol. I, p. 220. There existed at one time some confusion between " appropriation " and " impropriation," but " appropriation," when that word is properly used, refers to the attachment of an ecclesiastical benefice to the perpetual use of some religious house, or Dean and Chapter, or other spiritual person. " Impropriation," on the other hand, is correctly used to refer to the transfer of the property of an ecclesiastical benefice into the hands of a layman, and to the possession by a layman of the property so transferred. Such was the nature of the ownership by a layman of a benefice transferred to him by royal grant or the like at the time of the Reformation. When the property in the incorporeal hereditament was acquired by the lay owner, he still remained, generally speaking, personally liable to maintain, or help to maintain, the chancel of the church of the parish from which the benefice was drawn. I cannot see by what right the phrase " lay impropriator " in s. 28 should be given so limited a meaning as is suggested. The county councils and the University of Wales alike acquire this species of property by force of the statute. The nature of the thing transferred and the obligations attached to its ownership do not alter because the mode of transfer is statutory. Indeed, in earlier times, I should suppose that there were a good many cases of Acts of Parliament which transferred such property from spiritual to lay hands. Confining myself, therefore, to the ordinary meaning of " lay impropriator," I should be led to the view that such a phrase would cover the county councils and the Welsh University in respect of their acquisition by statute of tithe rentcharge which formerly formed part of Welsh ecclesiastical property. The position of the Welsh

Commissioners I will consider later. As to (*b*) moreover, the language of s. 28 itself goes to indicate that the lay impropriator referred to is not limited to the kind of owner of which Plymouth Estates, Ld., is an example, for considered grammatically, the phrase beginning "but a county council," etc., plainly involves the assertion that a county council to whom tithe rentcharge is to be transferred under the Act is a lay impropriator. The section says that any lay impropriator is to be under the liability of chancel repair, and then goes on immediately to state the exception "but a county council "shall not by reason of being entitled to or receiving any tithe "rentcharge under this Act be liable for the repair of any "ecclesiastical building." I do not myself quite appreciate the force of the explanation offered in the Court of Appeal (1) that this reference to the county council was inserted "ex "abundanti cautela." The insertion of the exception enjoyed by county councils, which obviously limits the generality of what has gone before, is also of importance in helping to determine whether the university, in respect of the tithe rentcharge which it is entitled to receive, is not to be regarded as a lay impropriator. The section first asserts that any lay impropriator remains under the liability of chancel repair. *It* then goes on to state by way of exception that the county council, though "entitled to" or "receiving" tithe rentcharge under the Act, is not to be so liable, and, according to all ordinary principles of construction, it thus implies that the University of Wales, which is the other recipient of tithe rentcharge at the hands of the Welsh Commissioners, is a lay impropriator to whom the liability of chancel repair attaches. I, therefore, reach the conclusion that both the county council and the University of Wales are lay impropriators. The duty of the House is to interpret the section as it stands, and I must respectfully refuse to adopt an interpretation which seems to me not to follow the language which the legislature has chosen to employ.

I now come to the more difficult question whether the Welsh Commissioners should be regarded as "lay impropriators." In *Commissioners of Church Temporalities in Wales* v. *Representative Body of the Church in Wales* (2), the Court of Appeal, reversing Morton J., decided that the Welsh Church Commissioners, while there was vested in them tithe rentcharge which was transferable to county councils, were not on that

(1) [1943] Ch. 183, 195. (2) [1940] Ch. 607.

account liable for chancel repair. The actual conclusion in that case as above defined appears to be correct, and it is supported by observing that the exemption of county councils applies whether they are "entitled to" or are actually "receiving" tithe rentcharge under the Act, but I am not able to accept the width of reasoning adopted in the Court of Appeal's judgment in that case, according to which the same conclusion would be reached if the tithe rentcharge vested in the Welsh Commissioners was transferable to the University of Wales. It has to be remembered that the Welsh Church Commissioners are a statutory body with a limited life specially created to carry through the transfer of Welsh ecclesiastical property to its various recipients. The commission was originally intended to continue for three years and then to be dissolved. While the commissioners doubtless had the duty of managing the property vested in them until it was transferred their duties as managers must be discharged with due regard to the rights, interests and obligations of those who were going to benefit by the transferred property. While, therefore, in the case of tithe rentcharge to which the county councils were "entitled" the commission were not required to meet chancel repairs out of tithe rentcharge for the time being in their hands (and, indeed, would have been liable to the county councils for misapplication of the receipts if they had done so), the position is different as regards tithe rentcharge whieh is transferable to the University of Wales. As I have already said, the University of Wales when it owned the tithe rentcharge which was coming to it would be a "lay impropriator," and, in view of the language of s. 28, would be under the obligation of chancel repair. The Welsh Commissioners, while they have vested in them tithe rentcharge which is coming to the university, would be under a similar obligation. Whether in these circumstances the Welsh Commissioners (who, of course, enjoy no benefit from holding tithe rentcharge) should be regarded as lay impropriators or only as a statutory body with a duty to act in this matter as the university would properly act is largely a matter of words. If they neglected this duty it might well be that the chancel would fall into ruin and there would ultimately be imposed on the University of Wales a far more onerous liability than would arise if the repair was effected promptly. For these reasons I have reached the view that the question raised by the originating summons should be answered by saying that tithe rentcharges, which, but for the Tithe Act, 1936,

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would have been transferable to the University of Wales and which were immediately before October 2, 1936, vested in the Welsh Commissioners, were liable in the hands of the Welsh Commissioners for the repair of chancels of churches in the parishes where they arise. I move that the appeal be allowed.

LORD MACMILLAN. My Lords, I am so entirely in accord with the views which have been expressed by my noble and learned friend on the woolsack on the matters raised in this appeal that I need do no more than state my concurrence.

LORD WRIGHT. My Lords, I have read in print the opinion which has been delivered by the Lord Chancellor. I agree with it. I merely add a few observations to indicate the reasons which induce me to differ from the courts below. The arguments on the appeal have ranged over a wide field, and, no doubt, much discussion has been necessary to throw into relief the decisive question, which is whether the University of Wales is to be held to be subject to liability for chancel repairs in respect of the rentcharges transferable to it under the Welsh Church Acts, 1914 and 1919. As under the Tithe Act, 1936, all tithe rentcharges were extinguished and tithe redemption stock has been substituted for the rentcharges as on October 2, 1936, the practical problem is whether the redemption stock to be issued under the Act of 1936 to the Welsh Commissioners (as I shall describe the respondents, the Commissioners of Church Temporalities in Wales), so far as it represents tithe rentcharge transferable to the University of Wales should suffer a deduction in favour of the appellants, the Representative Body of the Church in Wales, of such an amount of the stock as would represent the commuted or capitalized value of the estimated future cost of chancel repairs. The Court of Appeal has held that the University of Wales, not being liable for the cost of chancel repairs, is not subject to have their amount of stock so reduced. The appellants, whose functions correspond to those of the Diocesan Board in England and represent the parishioners, appeal on the ground that the cost of repairing the chancel ought not to fall on them.

When the complications inevitable in a topic of this character have been examined and cleared away, the central problem presents itself in a comparatively simple form. That problem is, whether the Welsh Church Act, 1914, has changed the law in the respect that the owner of the tithes in question is

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thereby relieved from the liability to repair the chancel, which the custom of England, that is, the common law, has attached to the ownership of the tithe and that the ordinary meaning of " lay impropriator " does not apply to the owner of the tithes in question. The answer to these problems is to be found in s. 28 of the Act of 1914, read with the rest of the Act and in the light of established principles of law. The Court of Appeal has fully appreciated that the acid test is whether the Act of 1914 has in s. 28 given a special limited connotation to the words " lay impropriator." The Court of Appeal have given their reasons for thinking that it has. I am unable, with all respect, to accept the correctness of those reasons.

After the dissolution of the monasteries and the extensive distribution among lay rectors of the tithe formerly held by the monasteries, which were spiritual persons, a sharp distinction grew up between two words, " impropriations," which was the term properly applied where temporalities of the benefice were held in lay hands, and " appropriations," which was the term used in cases where the benefice was annexed to a spiritual corporation, sole or aggregate. In the former case the owners were generally called " lay impropriators," though the word " lay " was strictly otiose. The authorities cited by the Lord Chancellor, the list of which might be multiplied, sufficiently show that the repair of the chancel was imposed on the rector, and was *so* imposed by law. I venture to cite for both propositions an additional case, that of *Hawkins* v. *Rous* (1), in 7 Will. 3, where Holt C.J. laid it down that " by the civil " and canon law, the parson is obliged to repair the whole " church ; and 'tis so in all Christian kingdoms but in England ; " for 'tis by the peculiar law of this nation, that the parishioners " are charged with the repairs of the body of the church "— that is, excluding the chancel. Now, under the Act of 1914 the particular tithes in question, which were then vested in the Ecclesiastical Commissioners or Queen Anne's Bounty as lay impropriators because they are lay bodies, were to vest in the Welsh Commissioners until their final transfer to the university. All these bodies in turn would, in the ordinary use of language, be correctly described as lay impropriators and would prima facie be subject to the established liability to repair the chancel. Section 28, sub-s. I, of the Act provides : " Nothing in this Act " shall affect any liability to pay tithe rentcharge, or the

(1) (1695) Carth. 360.

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"liability of any lay impropriator of any tithe rentcharge to "repair any ecclesiastical building, but a county council shall "not, by reason of being entitled to or receiving any tithe "rentcharge under this Act, be liable for the repair of any "ecclesiastical building." These words would cover the repair of the chancel. Unless the words "lay impropriator" in s. 28 can be twisted from their normal meaning so as not to cover the Welsh Commissioners if tithe owners or the University of Wales as ultimate owners, the language of s. 28, sub-s. I, would seem conclusive to establish the liability of these bodies. But assurance is made doubly sure when the rest of the sub-section is considered—I mean the words introduced by "but." "But" would naturally be construed as introducing an exception from what would otherwise have been covered. The necessary implication of these words, as it seems to me, is that the county councils would, but for the exception, have been lay impropriators within the meaning of the section and as such would have been subject to the liability to repair the chancel, but are to be entitled to a special exemption which does not extend to the university. Its position is left to be governed by the general law which I have explained. The words introduced by "but" do, however, make it clear that the general provisions of sub-s. I of the section would, but for the exemption, have had the effect of imposing the liability on the councils in their character of lay impropriators. Apart from the express saving in favour of the councils, both the university and the councils would equally have been liable for the repairs. As the exception, which is limited to the councils, does not extend to the university, the latter is left with the unqualified liability.

The form of question proposed in the summons is framed so that it can be answered without considering the changes effected by the Act of 1936 which extinguished rentcharges and substituted for them the appropriate amounts of redemption stock. In my opinion, the answer to be made on the summons should be in the form proposed by the Lord Chancellor which is, in effect, that the university is subject to the liability and the appeal succeeds. The Court of Appeal arrived at the conclusion that the university was not so liable. In their earlier decision in *Commissioners of Church Temporalities in Wales* v. *Representative Body of the Church in Wales* (1), they had held that the councils were not liable. I agree with their

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decision in that case, but not with their reasons. In any case they failed to notice the difference under s. 28 between the positions of the councils and of the university. Though the court admitted (1) that, according to the ordinary use of words, "lay impropriator" in s. 28 would include both the Ecclesiastical Commissioners, and, therefore, presumably, the Welsh Commissioners, the university and the county councils, the opinion of the court was that the special context of the Act of 1914 necessitated a different conclusion. The reference to county councils in s. 28 was explained as having been inserted ex abundanti cautela. It was further said (2) that so important a provision would not appear in a part of the Act headed "Supplemental." The court particularly relied on its view that s. 3 of the Act had abolished the whole of the ecclesiastical law of the church in Wales as law, and also had abolished ecclesiastical courts in Wales. In effect, the Court of Appeal limit the term "lay impropriator" to the class of lay persons like the appellants, Plymouth Estates, Ld., who, by purchase or inheritance or otherwise, have become possessed of rentcharges which are outside the scope of the Act because s. 4 does not apply to them as not being church property.

There is no definition in the Act of "lay impropriator." The words must, I think, prima facie receive their ordinary connotation. They are only used in one other place in the Act, that is in s. 38, sub-s. 4, but there, I think, they are used in their ordinary sense. I am not clear as to the precise effect of the very general words of s. 3, if it applies at all to an incorporeal hereditament like tithes, a well-known type of real property, but I am clear, for the reasons given earlier in this opinion, that the rules relating to tithes as an incorporeal hereditament are not part of ecclesiastical law, but are part of the common law, though it is true that proceedings for their enforcement were left, in the first instance at least, to the ecclesiastical courts. The King's Bench, however, would always intervene on grounds of law to control by writ of prohibition or the like the proceedings of the ecclesiastical courts, as the authorities show. It is not, I think, and cannot be, suggested that the existence of tithe rentcharges was abolished by the Act of 1914, and there is no provision in the Act, except in the particular case of county councils, to vary the established rules as to the liability to repair the chancel. On the other hand, what has happened in this case shows the

(1) [1943] Ch. 183, 195. (2) Ibid. 193.

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wisdom of the legislature in putting in plain words the rights and liabilities which are expressly saved in s. 28 and in providing in sub-s. 2 a convenient procedure for their enforcement. The section was also necessary to introduce the special exception applying to county councils, which deals with both the intervening period between the vesting of the tithe rentcharge in the Welsh Commissioners and their eventual transfer to the county councils. That point was expressly dealt with in the case of county councils by the words in s. 28, sub-s. I, "being entitled to or receiving any tithe rentcharge," which seem to distinguish between the temporary period of transition and the final transfer to the councils. There is no similar mention in reference to the university, but its liability is left to the general law. The Welsh Commissioners were, indeed, a statutory body of temporary existence created for the special defined purpose, but, though it is not necessary to decide finally, I think they were owners pro tempore of the rentcharges during that period which was more prolonged than was anticipated, I find it difficult to think that an incorporeal hereditament like tithe could be left without an owner even for a time. The language of s. 4 expressly speaks of the property vesting, and s. 8 uses similar language. My own opinion is that during the period before final transfer under s. 8 the Welsh Commissioners were legal owners of the property, the councils and the university respectively being beneficial owners. The duty of the commissioners would thus be in the meanwhile to manage the property in the interest of the beneficial owners, with due regard to the latters' liabilities or immunities, distinguishing for instance between the position of the councils which were freed from liability for repairs and the university which was not exempted. Without, however, further discussing these and other interesting contentions I am content to rest my conclusion on what I think is the true construction of s. 28. I would allow the appeal.

LORD PORTER. My Lords, if it were not that this House has formed an opinion different from that entertained by the Court of Appeal, I should not think it necessary to express a view of my own, but should be content to adopt that of your Lordships. As it is, I think I can express my opinion shortly.

The decision depends primarily on the construction of ss. 3 and 4 of the Welsh Church Act, 1914 (as modified by the Welsh Church (Temporalities) Act, 1919) and of s. 28

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of the earlier Act. The matter in dispute concerns the liability or non-liability of the University of Wales, to shoulder the burden of repairing the chancels of certain churches in Wales, a burden formerly imposed on the holders of tithe rentcharges destined by the Act of 1914 to the university. The question is to some extent complicated by the passing of the Tithe Act, 1936, but that problem is best dealt with at a later stage.

The change of ownership of the tithe rentcharge in question is the result of the passing of the Welsh Church Act, 1914, which, by s. I, disestablished the Church of Wales, and by s. 3, sub-s. 1, abolished the jurisdiction of all ecclesiastical courts and persons in Wales and Monmouthshire and enacted that the ecclesiastical law of that Church should "cease to exist as "law." Section 28 dealt with the obligations of continuing to pay tithe rentcharge and of lay impropriators to repair ecclesiastical buildings. Your Lordships have already had placed before you the various sections of all three Acts which are germane to the determination of the matters which require your decision. Like the Lord Chancellor, I do not desire to dogmatize as to the effect of s. 3, but for the purposes of the present dispute I am willing to assume that its provisions would, if they stood alone, abolish any remedy previously existing in a case where the holder of a tithe rentcharge failed to discharge the duty imposed upon him as holder of repairing the chancel of a church. But that section does not stand alone. It is qualified by the terms of s. 28, which keep alive the liability of the lay impropriator of any tithe rentcharge to repair and provide means for enforcing that liability in the temporal courts as if the liability arose under a covenant running with the tithe rentcharge. Prima facie, therefore, if the tithe rentcharge gets into the hands of a lay impropriator at any time it is held subject to the liability to repair. Necessarily, in these circumstances, much of the discussion before your Lordships turned on the meaning of the words "lay impro- "priator." The phrase is nowhere defined. It was urged that, in their inception, the words referred to a known body of persons to whom the tithe had been granted and who held it for their own benefit or as trustee for some private holder and that they had no reference to such bodies as the Ecclesiastical Commissioners, the Welsh Commissioners, the University of Wales or any county council. In support of this argument reliance was placed on the words of Ayliffe's Parergon at p. 90 :

"An impropriation, of which there are in England three "thousand eight hundred and forty-five, is properly so called, "when it is in the hands of a layman: and an appropriation is, "when it is in the hands of a bishop, college, religious house, "and the like." These words were said to show that only the three thousand eight hundred and forty-five lay persons and, of course, their successors in title, were properly so described, and were those intended to be referred to in s. 28 of the Welsh Church Act. This seems to be too narrow a view. The statement as to the number of lay impropriators is, I think, merely an enumeration of the members of that class in John Ayliffe's time, not a description of their quality. They are defined, as I conceive, in the statement that impropriation exists where the property is in lay hands, and this meaning is borne out by Ayliffe's statement on p. 89, when he says: "An "appropriation can only be made to a body politic, or corporate "spiritual, that has succession; and thereby that ecclesiastical "body is made perpetual incumbent of the benefice appro-"priated, and for ever shall enjoy all the glebe, tithes, and other "profits belonging thereunto, and has therewith the charge of "the souls belonging to the parish where the church appro-"priated is: upon which account it is, that an appropriation "regularly ought only to belong to a spiritual person, or (at "most) to aggregate bodies spiritual that consist of priests." Therefore, in deciding whether tithes are in the hands of a lay impropriator or not I think the question to be answered is not r Is the holder a successor of a known and limited number of persons? but is rather: Is the person, or is the body, an ecclesiastical person or body, or a non-ecclesiastical person or body? It was suggested that, if this be the question, there was no reason for providing in s. 38, sub-s. 4, of the Act that "the principal or other member of Jesus College, Oxford, "who may from time to time be rector of Llandyssil, shall "as such be treated as a lay impropriator." This provision, however, as I see it, is only inserted to deal with the difficulty that the principal or other member might at one time be a layman and at another an ecclesiastic, and, therefore, the Act provided that he should preserve the character of a layman in his capacity of rector, whatever his actual status might be.

I think Bennett J. and all the members of the Court of Appeal agreed that in its ordinary sense the term "lay "impropriator" would include at any rate a county council and the University of Wales, and I do not think they dissented

from the view that in such a case the Ecclesiastical Commissioners and Welsh Church Commissioners would come within the same category. I have given reasons for supposing that this view is correct, and, contrary to the decision of the Court of Appeal, I see nothing in the Act to controvert it. Rather the reverse, but as I agree with the reasoning and opinion of the Lord Chancellor I need not elaborate this point. Even, however, if I thought that the meaning of "lay impropriator was a matter of doubt or in other cases did not include such bodies as the Ecclesiastical Commissioners or the Welsh Church Commissioners, I should, like the Lord Chancellor and Lord Simonds, take the view that in this Act the Welsh Church Commissioners at any rate come within the class of lay impropriators as holding the property solely for the benefit of two lay bodies and as being under an obligation to transfer it to them at the appropriate time. On this point I have had an opportunity of reading, and would desire to adopt, the reasoning of Lord Simonds. The result of this view is that when the Tithe Act, 1936, came into force the Welsh Church Commissioners were and now are lay impropriators of and then held the tithe rentcharges transferred to them under the Welsh Church Act, 1914, which would have been transferable to the University of Wales, subject to the liability for the repair of chancels of churches to which they were subject or gave rise immediately before the vesting thereof in such commissioners. I would allow the appeal and declare accordingly.

LORD SIMONDS. My Lords, I concur in the motion that this appeal should be allowed and but for the fact that we are differing from the decision of the Court of Appeal I should not think it necessary to add anything to what has been already said. There are, however, two aspects of this case to which I wish to call attention. In the first place, I find it impossible to limit, as the Court of Appeal has limited, the effect of s. 28 of the Welsh Church Act, 1914. I do not think it necessary to determine the exact scope of that "ecclesiastical law of the "Church in Wales" Which by s. 3, sub-s. I, of the Act is to "cease to exist as law." The Court of Appeal has assumed that it includes the liability of the owner of the rectorial tithe to repair the chancel of the church of the parish out of which the tithe issues, and this assumption has, I think, largely influenced the interpretation which they have placed on s. 28. I share the doubts which have been expressed by your Lordships

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on the validity of this assumption in the light of the further researches that have been made into the history and nature of the liability, but, however this may be, I find myself constrained by the language of s. 28 to hold that for the purpose of this section the county council is regarded as a lay impropriator who would, but for the express exemption, be subject to the liability to repair. If the county council is to be so regarded, I cannot escape the conclusion that the University of Wales must be similarly regarded.

In the second place, I would add some brief observations on the position of the Welsh Commissioners. The passing of the Tithe Act, 1936, and the consequent necessity for the Tithe Redemption Commission to ascertain at a particular moment of time the existence and quantum of liability to repair arising from the ownership of a tithe rentcharge extinguished by the Act have brought into a somewhat artificial prominence the ownership of the Welsh Commissioners who are themselves a statutory body of an impermanent character. I cannot help thinking that, if no question of the issue of tithe redemption stock had ever arisen, but during the period of transition, in which the ownership of tithe was vested in the Welsh Commissioners, the question of repair to a particular chancel arose, the obvious solution would be found in the liability or freedom from liability of the beneficiaries to whom after that period of transition the tithe rentcharge would come. If that beneficiary were the county council, which takes free from liability, it would surely be a strange provision if the Welsh Commissioners during their period of management, long or short, were bound, or even at liberty, to embark on a work of repair which might in certain circumstances be of a substantial character. Equally, if the beneficiary were the University of Wales, which takes subject to the liability, it would be a strange thing if, during their period of management, the commissioners were not at liberty, and, indeed, as a matter of proper management, were not bound, to take the necessary measures of repair. In the repair of chancels as of other buildings the homely prov.erb that a stitch in time saves nine is effectively true. The Welsh Commissioners would, in my opinion, fall short of their duty of management if, by the neglect of proper repairs, they left a heavier burden to be borne by their ultimate beneficiary, the University of Wales. These considerations make it unnecessary to determine whether the Welsh Commissioners ought to be regarded as lay impropriators within s. 28, while

the tithe rentcharges are vested in them. In my opinion, those rentcharges which would after their period of vesting in the Welsh Commissioners have been transferable to the University of Wales carried with them the burden of chancel repair throughout their journey to that destination and the question raised by the summons out of which this appeal arises should be answered accordingly.

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SAME.
Lord Simonds.

The House ordered "that the question raised by the "originating summons should be answered by saying that, "upon the true construction of the Welsh Church Acts, 1914 "and 1919, the tithe rentcharges which were formerly vested "in the Ecclesiastical Commissioners for England and which, if "the Tithe Act, 1936, had not been passed would have been "transferable to the University of Wales under the Welsh "Church Acts, 1914 and 1919, by the defendants the "Commissioners of Church Temporalities in Wales, became " and were immediately before October 2, 1936, vested in the "said defendants the Commissioners of Church Temporalities "in Wales subject to the liability for the repair of chancels of "churches to which such rentcharges were subject immediately "before the vesting thereof in the defendants the Com-"missioners of Church Temporalities in Wales."

Appeal allowed.

Solicitors for Representative Body of the Church in Wales : *Milles, Jennings White & Foster.*

Solicitors for Plymouth Estates, Ld. : *Nicholl, Manisty, & Co.*

Solicitor for the Welsh Commissioners and the University of Wales : *R. Primrose.*

Solicitor for the Tithe Redemption Commission : *A. D. Stocks.*