

FIRST FRUITS, IRELAND.

COPIES of the CASE AND OPINIONS of the LAW OFFICERS of the CROWN in *Ireland*, on the subject of the RE-VALUATION of the BENEFICES to the FIRST FRUITS FUND, as taken on an Address to His Majesty of the 14th of March last.

Ordered, by The House of Commons, to be Printed, 23 August 1831.

CASE for the Opinion of the Right Honourable the Attorney General, the Honourable the Solicitor General, and Richard W. Greene, Esq., respecting the Re-valuation of Benefices in Ireland.

HEREWITH is laid before you Colonel Gosset's letter of the 19th March 1831, transmitting a letter from Lord Melbourne, and signifying the Lord Lieutenant's desire that a Case should be prepared and laid before the Law Officers of the Crown, for their Opinion how far His Majesty is now empowered to issue a Commission for the Re-valuation of Benefices in Ireland, with a view to the levy of First Fruits, and requiring a copy in duplicate of said Opinion, in order that it may be forwarded to be laid before the House of Commons, in pursuance of their Resolution, dated the 14th instant. This letter was accompanied by several documents, numbered from 1 to 11.

Also, Lord Melbourne's letter, above referred to, bearing date the 15th March 1831, and stating that the King having been pleased to comply with the prayer of an humble Address presented to His Majesty, in pursuance of a Resolution of the House of Commons, dated 14th March 1831, "That he will be graciously pleased to give directions that the Opinion of the Law Officers of His Majesty in Ireland be taken how far His Majesty is now empowered to issue a Commission for the Re-valuation of Benefices in Ireland, with a view to the levying of First Fruits;" his Excellency was by said letter requested to cause the Opinion of the Law Officers in Ireland to be taken accordingly.

No. 1.—THIS is a Case prepared on behalf of the First Fruits Office in Ireland, which contains a history of the revenue of First Fruits or Annates in England, which was originally a tax or tribute paid to the See of Rome, from a very early period down to the Reformation; and this history is briefly given from the reign of King John to that of Charles the second, in which it is only important to notice, that under 26th Henry the eighth (English), a new Valor Beneficiorum was made, which to this day remains the rule of England for ascertaining First Fruits of such Benefices as were then rated, notwithstanding several attempts which were subsequently made to alter the rate of said First Fruits, and to have it increased by Valuation, particularly in the time of Elizabeth, James the first, Charles the first, and Charles the second.

With respect to Ireland, history commences with the 28th Henry 8, c. 8, which enacts that the Chancellor, Master of the Rolls and Under Treasurer, or any two of them, or such other person as it should please the King from time to time to depute by Commission under the Great Seal, shall have authority, as well to examine and search for the just and true Value of First Fruits, as to compound and agree for the rate of the same, and to limit reasonable days for the payment thereof and details. The several statutes enacted from time to time on the subject of the several Valuations which were made under said first-mentioned statute, or any of them, or anterior thereto. The several Commissions which remain of record, authorizing such Valuations, and the Letters Patent appointing clerks or receivers of First Fruits to the present time.

According to those details, the Valuations which are of no certain date, and may have been anterior to said Act, comprehended part of the Dioceses of Leighlin, Ardfert and Lismore. The first Valuations which appear to have been made under said Act, but whether by virtue of a Commission or otherwise, were made in the 29th year of Henry the eighth, and comprehended the Dioceses of Kildare, Ossory and Ferns, and the Archdiocese of Cashel, and in the 30th year of said reign the Archdiocese of Armagh and Dublin.

That by the English statute 3d & 4th Philip and Mary, c. 4, it was enacted that the payment of First Fruits to the Crown should cease for ever; but by the Irish statute 2d Elizabeth, c. 3, said Act, as if binding Ireland, is repealed. And it was by the 4th section enacted, that all and singular vicarages not exceeding the yearly value of 6*l.* 13*s.* 4*d.* after the rate and value of the First Fruits and twentieth parts, then remaining in the Exchequer, or that should thereafter come and remain in the same court, and also all and singular parsonages not exceeding the value of 5*l.*, as therein mentioned, should be discharged and acquitted for ever of and from the said First Fruits.

A similar Act was passed in Ireland, 3 & 4 Philip and Mary, c. 10.

That the second Valuation took place in the 26th year of Elizabeth, 1585, under letters patent bearing date 1st June 1584, granting authority from the Crown to Sir Henry Harrington, knight, or his sufficient deputy, to extend, rate and value for seven years next ensuing the date, all and singular such archbishopricks, &c., and all other spiritual dignities, &c., which already were not extended, rated or valued, and so remaining of record in the Exchequer. Under those letters patent Sir Henry Harrington appointed three deputies; and by letters patent, bearing date 25th March 1525, Daniel, bishop of Kildare, was appointed a Commissioner adjunct, either with the said Sir Henry Harrington, or his deputies, to make this Valuation. By letters patent, bearing date the 27th August 1586, Nicholas Kenny was joined with the others as a Commissioner, he being at the time clerk or remembrancer of First Fruits. The following were the Sees valued by virtue of these letters patent: Ardagh, Elphin, Killala, Clonfert, Tuam, Kilmacduagh, part of the Diocese of Meath, part of Kildare, and part of Leighlin, Kilmore, Cork, Ross, Cloyne, Ardfert, Limerick and Lismore.

That the third Valuation was under a Commission, bearing date the 5th of April 1616, in the 14th year of James the first, directed to Christopher, bishop of Kildare, and five other Commissioners; but this Valuation was confined to the Diocese of Kildare alone.

That the fourth Valuation was under a Commission issued on the 3d October in the same year, directed to Sir Oliver St. John, lord deputy of Ireland, and five other Commissioners, reciting that the estates of the bishopricks and other ecclesiastical benefices within the province of Ulster had lately been established, and the yearly values thereof much augmented by the King's princely bounty, yet that there had come to the Crown little or no profit, either by the First Fruits or twentieth parts, by reason that theretofore there had not been any taxation made or returned into the Exchequer of Ireland of the yearly value thereof, by which, if the said bishopricks and benefices should be taxed at the utmost yearly value, and all the subsidies, First Fruits and twentieth parts, should be paid according to the rate, the condition of the clergy in that province would be much weakened, for avoiding of which inconvenience, it was the King's gracious pleasure, in favour of the church, to dispense with the strictness of the statute, and in his princely discretion to set down the certain taxation of the archbishoprick of Armagh, and of the bishopricks of Clogher, Derry, Raphoe, Kilmore, Ardagh, Down, Connor and Dromore, and that a like moderate taxation be made of all the spiritual livings within the said province; the said Commissioners were accordingly appointed to inquire, by the oaths of good and lawful men, and by other good ways and means, what are the reasonable, indifferent and moderate yearly Value of the archbishopricks, &c. &c., distinctly to tax, rate, assess and set down in particular the yearly Values according to the rates therein particularly specified, the statute of 28th Henry the eighth notwithstanding.

That this Valuation comprehended the Diocese of Connor, Raphoe, Armagh, Clogher, Kilmore Derry, Down and Dromore, and the deanery of Christ Church, Dublin; that some of said dioceses had been taxed originally in the 30th year of Henry the eighth, and that several of the rectories and vicarages in the Diocese of Kilmore were re-taxed, and the values thereof considerably increased on the latter taxation, in the time of James the first.

That

That the fifth and last Valuation was under a Commission, bearing date the 6th August, in the reign of Charles the first, directed to John, bishop of Killala, and several others, and under two other Commissions, bearing date the same day, directed to Randal, archbishop of Tuam, and several others. These Commissions recited that the King was credibly given to understand that as well the several ecclesiastical dignities, rectories, and other spiritual promotions and livings specified in the schedule annexed, as divers others not known or entered in the office of the chief remembrancer or clerk of the First Fruits, are not as yet taxed or rated of record, by which means the King had been theretofore wholly bereaved of the First Fruits and twentieth parts due out of said livings by the statute in that case provided: the said Commissioners were appointed to inquire by the oaths, &c., the true, just, whole and entire yearly Value of the livings in the schedule thereto mentioned, as also of any other dignities, &c. in the Diocese of Limerick and Killaloe not as yet taxed, or theretofore yielding or paying the First Fruits or twentieth parts.

That this Valuation comprehended several spiritual livings in the Dioceses of Limerick and Killaloe, Elphin, Achonry, Tuam and Clonfert.

That the Diocese of Kilfenora has never been subjected to a First Fruits taxation, and that there are nearly 1,000 rectories and vicarages in Ireland similarly circumstanced.

That by letters patent, bearing date the 7th of February in the 20th year of Queen Anne, the Queen granted to Narcissus, archbishop of Armagh, and several others, all and all manner of First Fruits issuing out of ecclesiastical benefices, payable by the clergy in the kingdom of Ireland, to hold the same to the uses therein mentioned; viz. the building and repairing of churches, the purchase of glebes where they were wanting, and of impropriations, whereon the benefice was not sufficient for the liberal maintenance of the clergy having the cure of souls; and that in this grant the First Fruits are stated as casual and uncertain, and seldom exceeding from 400*l.* to 500*l.* per annum.

That these letters patent were confirmed by the statute of the 2d Geo. 1, c. 15.

That by the 10th Geo. 1, c. 7. the Trustees and Commissioners of First Fruits were incorporated. By the fifth section it was enacted, that wherever any parish or parishes, or parts thereof, then liable to the payment of First Fruits, should be divided by virtue of the 2d Geo. 1, c. 14, it should and might be lawful for the chief governor and governors, and Privy Council, in and by the instrument in writing, whereby just division should be made, to settle and ascertain a just proportion of the First Fruits then due for such parish or parishes, or parts thereof, which should be so divided, and that such First Fruits as should be thereby ascertained, and no other, should from thenceforth be payable out of and for said parish, &c. &c.

That by the 9th Geo. 2, c. 12, s. 5 & 6, upon the division or union of parishes, the bishop is empowered to inquire into the Value of such parishes or parts of parishes as are separated from the old parish and entered into the new parish; and to return the adjudication into the Exchequer, by which only such parishes should be charged.

That by the 29th Geo. 2, c. 18, s. 6, the respective archbishops and bishops of every diocese are empowered from time to time by the oath of credible witnesses, &c. &c. to inform themselves of the clear, improved yearly Value of every Benefice therein, and how arising, where commonly reputed under 60*l.* per annum, and the same to certify to the Trustees and Commissioners of First Fruits, who were thereupon empowered to augment any such benefice, &c. &c. as is therein set forth.

That by letters patent, bearing date the 30th May 1812, the office of clerk of the First Fruits and twentieth parts, as also of receiver and remembrancer of the same, was granted to Walter James Glasscock, Edward Glasscock, and William Shaw Mason, esquires, and the survivors and survivor, who were also appointed by said letters patent Commissioners and Commissioner, from time to time to collect, levy and receive, and to examine and search for the just and true Value of all and singular the said First Fruits and twentieth parts, of all and singular the said archbishopricks, bishopricks, &c. &c. and to confirm and agree for the same according to the rates and taxations thereupon now made, or hereafter to be made, and by different statutes, made in Ireland in the 28th year of Henry the eighth, ordered and established.

These are the substantial facts of this Case; various inferences are deduced from them, and the Opinion of counsel was requested, whether the old Valuation was to be considered in law as permanent, and always to continue the same, or whether the patentees or commissioners named in the last-mentioned patent have now the power of making a new Valuation of all the Ecclesiastical Dignities in Ireland, and if so, what are the necessary legal steps to be taken.

This Case appears to have been submitted by the above-named clerks of the First Fruits to the late Mr. C. E. Allen, who gave his Opinion thereon as follows:

Copy FIRST OPINION of Mr. Allen.

By the Act of Henry the eighth, such person as that King, his heirs and successors, should from time to time name and depute, by Commission under the Great Seal, has power and authority as well to examine and search for the full Value of the First Fruits by all necessary means, as to compound and agree for the rate of them; and the person so deputed has clearly the same power which the Chancellor, Master of the Rolls, and Under Treasurer would have had by that Act, if such deputation had not been made. From the nature of the grant of such an office, the power of taking an inquisition, in order to inquire into the annual Value of Benefices, necessarily follows.

And such inquisition may, in my opinion, be taken from time to time; for no statute generally declares that a Valuation being once made, another Valuation shall not be made; and in order to fulfil the objects of the Legislature, a power of Re-valuing is necessary; accordingly (as is stated) the primacy, the diocese of Kilmore, and several rectories and vicarages have been re-taxed, and their Values increased on the last taxation. Such power, unless it has been taken away by the letters patent of Queen Anne, and the confirmatory statute of the 2d George the first, or by some other statute, must, in my opinion, still remain in the Crown, and be the subject of grant. Now it is to be observed, that ever since that statute of George the first to the present time, the Crown has granted the office of remembrancer of the First Fruits in very extensive terms, and as if such power existed. I have read a copy of the patent to J. Glasscock and N. Kempston, of the office, in the fourth year of his late Majesty, by which the same powers were given to those gentlemen, to do and execute all things relating to that office, as the Chancellor, Master of the Rolls, or Vice Treasurer could have done under the Act of Henry the eighth. Now in those powers the power of valuing is included. The patent of Mr. Mason and his partners is equally extensive, and it would require some argument to show that during an entire century the Crown has been ill advised and all those patents illegal.

By the letters patent of Queen Anne, and the statute of George the first, the First Fruits are certainly granted from the Crown to trustees for certain purposes, and by a subsequent statute the trustees are incorporated; but the clause of the statute of Henry the eighth, authorizing the granting of commissions to inquire into the Value of Livings, &c. is not expressly, nor, as I conceive, implicitly repealed; although the profits have been appropriated in a particular manner, the Court of Exchequer and Crown officers have always acted as if the power of recovering the amount of the First Fruits still remained in the King, for all process for the recovery of them still issues in his name; and indeed such part of the power or prerogative of the Crown as has not been expressly taken away, must still remain. But even if by these Acts the power created by the Act of Henry the eighth were transferred to the Corporation, nothing has been done, in my apprehension, to extinguish the power of Re-valuing; it would still subsist, and be vested in the Corporation: but the statute of 29th Geo. 2, c. 18, s. 4, vol. 7, p. 362, in my opinion, removes all doubts which the grant might have possibly created; for, by that section, all statutes and provisions touching the First Fruits, and the charge or discharge of them, which were in force at the time of granting those letters patent, and not expressly repealed, are declared to be in full force.

I am, therefore, of opinion, that the present patentees of the office have power to Value all such Benefices, &c., the present rates of which have not been expressly declared by statute to be permanent, and that the holding of an inquisition for that purpose is legal; for I cannot conceive that if some livings have been

been expressly exempted from a Re-valuation, any inference can be made of an intention to exempt all livings which have been already valued. The contrary inference is, in my mind, much more legitimate. The proposed measure is doubtless of great importance; the patentees should, therefore, proceed on it with that great caution and delicacy which is due to that respectable body whose interest may be affected by its execution, and should for that purpose endeavour to procure the sanction of the Lord Chancellor and the principal dignitaries of the Church; those eminent persons, when convinced (as I think they must be) that the cause of Religion must be promoted by such a measure, will doubtless give their assent and lend their assistance to it.

(signed) *C. E. Allen.*

[There is no date to either Case or Opinion.]

No. 2.—THIS is a Case prepared on behalf of the Board of First Fruits, respecting the Memorial of William Shaw Mason, Joint-Remembrancer and Receiver of First Fruits, and submitted to the Right Honourable William Conyngham Plunket, then Attorney General and Counsel of said Board, and now Lord High Chancellor of Ireland.

This Case appears to have been drawn without any reference to, or even knowledge of the preceding Case; it adverts, however, to the same statutes, and gives nearly the same history of the First Fruits and twentieth parts in Ireland; but it states that no Valuation for the First Fruits or twentieth parts was ever made, except under the 28th Henry 8, c. 14, and that no archbishoprick, &c. was valued a second time; and that according to the Valuation once for such a diocese so made and certified, and none other, have any payments of First Fruits been made by any archbishop, &c.; and that the same practice has uniformly prevailed in England, where there is a Court of First Fruits and Tenths.

Said Case sets out the letters patent of the 30th of May 1812, to Messrs. Glasscock and Mason, and adds, that said William Shaw Mason, as Joint-Remembrancer of First Fruits, &c. has lately memorialized the said Board of First Fruits, stating fully the above patent, and for the purpose of carrying into effect the powers thereby vested in him, prayed to the Board to grant such sum or sums of money as should be necessary for the purpose.

That Mr. Mason and his co-partners proposed to collect and levy the First Fruits, and probably the twentieth parts, pursuant to the powers alleged to be vested in him by his patent, according to what they should find to be the real present Value of the Bishopricks and Benefices, and that Mr. Mason, the acting patentee, had gone so far as to refuse to accept of payments tendered to him for First Fruits according to the Value now of record.

That the Board of First Fruits wished to be advised what powers are vested in the patentees under said patent, and whether they have any power to cause any new Valuation of said Benefices to be made, so as to collect the First Fruits thereby.

Upon this Case the Attorney-General gave his Opinion as follows :

Copy OPINION of the Right Honourable the Attorney General.

I HAVE considered this Case, and the several Acts of Parliament and documents referred to, and I am very clearly of opinion that the present patentees of the office of Receiver of First Fruits have not any authority to cause any new Valuation to be made of the Benefices which are liable to the payment of First Fruits; the power of making such Valuation never was vested in them, nor in the Chancellor, Master of the Rolls and Under Treasurer, their power being merely for the purpose of ascertaining from time to time the Value of the First Fruits, which is in its nature uncertain, and recited in Queen Anne's Patent so to be. The Value of the parsonages, &c. was to be ascertained in a different manner, namely, by the authority of the Chancellor or Keeper of the Great Seal, directing his Commission to the archbishop or bishop, and King's Commissioners, to ascertain the true Value; and I am of opinion that this Valuation being once made, there is no authority in any person to make a new Valuation; there is no provision in any of the English or Irish Acts, warranting the issuing of such Commission from time to time, though there is a provision in the English Act of 32d Henry the eighth, for curing omissions, by putting livings in charge which

had been omitted in former certificates, and accordingly when it became necessary to ascertain the improved Value of small livings intended to be exempted, as being under the annual value of 50 *l.*, a special provision is made for a Commission for the purpose, by the English Act of 5th & 6th Anne, c. 24, and by the Irish Act of 1st Geo. 2, c. 17; the provisions in the Acts referred to in the Case, ascertaining the proportion and fixing the sums in cases where parishes are divided or united, as also those deducting the tenths and twentieth parts from the First Fruits, furnish a similar inference; and, indeed, the provisions in the statutes which throw the burden of the twentieth upon the lessors would be most unjust, if that rate were liable to be increased by the lessee's improvements subsequent to the lease. When to all those considerations is added that of the uniform practice both in England and Ireland, the assumption on the part of the present patentees seems altogether unwarranted; they cannot now levy the twentieth part, and if they refuse to accept the First Fruits according to the Valuation heretofore made, they become subject to the several actions of such persons as may be injured by their refusal. I have no doubt whatever that the patentees will not consider themselves warranted in making such an innovation in the practice of their office, and in the administration which has uniformly prevailed of the code of laws relative to the First Fruits; and I think it right to add, if I were mistaken in my opinion as to the power of the Chancellor to issue Commissions from time to time to ascertain the improved Value, still it is perfectly clear that the patentees have no such right, and that they are bound to take the Value as at present ascertained, their duty being merely to inquire as to the Value of the First Fruits of Livings, the Value of which Livings is ascertained by another tribunal.

(signed) *W. C. Plunket.*

[This Opinion is dated 28th of October 1822.]

It appears that the last Case and Opinion were submitted to Mr. Allen with the former Case, No. 1, and that Mr. Allen gave the following as his second Opinion thereon:

Copy of SECOND OPINION of Mr. C. E. Allen.

I HAVE read a copy of the Case submitted to the Attorney General, and his Opinion on it. No person can entertain a more unfeigned respect for his talents than I do; but after having bestowed on the subject every attention of which I am capable, I feel myself bound to say that I cannot acquiesce in his reasonings; I still think that the power of retaking the Value of Livings has been fully conferred on the patentees by the patent under which they hold their office, and that they can proceed from time to time to ascertain those Values. Before I read that Case or Opinion, I had anticipated, and (I hope) have successfully answered some objections that have been raised against a Re-valuation; I mean those founded on the past taxations, and on the Acts of the Legislature in respect of some livings, the rate of the First Fruits of which seem to have been settled, and also in respect of some united parishes; and I have also adverted to (and I trust answered) an objection which might perhaps have been made, but of which no notice has been taken in that Case or Opinion; I mean the objection which might perhaps have arisen from Queen Anne's Patent, and the confirmatory statute of George the first. I have given to those objections and reasonings all possible consideration; but my opinion remains unshaken. I must observe that the Case submitted to the Attorney General seems to have been framed with the view of eliciting an Opinion against the power of re-taxation, for it is replete with argument and inferences, but does not afford all the information necessary to enable a lawyer to form a decided Opinion; in particular, it altogether omits the fact that the Values of the primacy and of many benefices have been increased by a new taxation; and, on the contrary, on search, that no new Valuation has ever been made. Now in a question of this nature, that fact is of great value, and should not have been omitted.

(signed) *C. E. Allen.*

It further appears that the Board of First Fruits having memorialized the Lord Lieutenant on the subject, the two foregoing Cases, and the several Opinions thereon, were, by his Excellency's directions, again submitted to the said Attorney General, and also to the Solicitor General, now Chief Baron Joy.

The

The Solicitor General's Opinion thereon is as follows :—

No. 3.—Copy OPINION of the Solicitor General.

I HAVE read the conflicting Opinions of the Attorney General and Mr. Allen in this Case: one of those gentlemen holds that there is no power to make any new Valuation, whilst the other holds that the Clerks of the First Fruits have a power, by virtue of their patent, from time to time, as often as they shall think fit, to make new Valuations. Without entering into the question whether once made is final, or whether new Valuations may or not be made from time to time by persons properly authorized for that purpose, I am of opinion that the Clerks of the First Fruits have no such power. The statute of the 28th Henry 8, c. 8, enacts, "That the Chancellor, the Master of the Rolls, and Under Treasurer for the time being, or any two of them, or such other persons or person as shall please the King from time to time to name and depute, by Commission or Commissions under the Great Seal, shall have power, &c." Now supposing that section of the Act to authorize new Valuations from time to time, still the persons who are to have that power are to be persons deputed for the purpose by Commission under the Great Seal. Now the manner in which such Commission is to issue is explained (if such explanation were wanted) by the Act of the same Session, c. 14, for the twentieth part; there the Chancellor is to direct a Commission under the Great Seal to such persons as the King shall name, authorizing the Commissioners to examine, search and inquire by all the ways, &c. The Commissioners are required to take an oath to execute their office faithfully.

I am of opinion that the patent appointing Messrs. Glasscock and Mason Clerks of First Fruits, is not a Commission under the Great Seal within the meaning of the 28th Henry 8, c. 8, and, consequently, that the Clerks of the First Fruits (who are not bound by any oath to value truly) have no authority to make any Valuation of Benefices under the statute. Should they persist in their claim to the exercise of a power which it was never intended they should have. I would recommend that their patent (which is only during pleasure) should be revoked.

(signed) *Henry Joy,*
Temple Street.

[This Opinion is dated 21st February 1823.]

The Attorney General's Opinion thereon is as follows :

No. 4.—Copy OPINION of the Attorney General.

I HAVE considered this Case, and with every possible respect for the Opinion of Mr. Allen, and after full consideration of the facts and arguments suggested by him, I cannot find any reason for departing from the Opinion already given by me on the subject.

(signed) *W. C. Plunket.*

[This Opinion is dated March 3d, 1823.]

Nos. 5 & 6 are Copies of Letters from his Grace the Archbishop of Cashel to the Honourable and Rev. H. Packenham, dated 23d December 1822, and 9th January 1823, and merely relate to the payment of First Fruits to be made by Mr. Packenham, on his appointment to the Archdeaconry of Emly, lately conferred upon him; and the refusal of Mr. Mason, the Clerk of the First Fruits, to receive same according to the Valuation of record.

No. 7 is the Copy of a Letter from William Shaw Mason, esq. to the Under Secretary of the Lord Lieutenant, withdrawing his refusal.

No. 8 is a Translation of the Grant of First Fruits and Appointment of Commissioners for receiving same in Ireland, bearing date 7th of February, 10th Queen Anne.

No. 9 is an attested Copy of the Grant exonerating the Clergy from the payment of the twentieth parts, also bearing date 7th of February, 10th Queen Anne.

No. 10 is a farther Case submitted to Mr. Allen on behalf of the First Fruits Office, referring to the Opinions given by the law officers of the Crown, and his farther advice and Opinion was requested, upon which Mr. Allen gave his Third Opinion as follows :

Copy THIRD OPINION of Mr. C. E. Allen.

I THINK, from the tenor of their Opinion, as stated in the preceding page, the Attorney and Solicitor General agree with me that the power of new valuing Benefices, &c. is still vested in the Crown. I have considered my former Opinions, and read Mr. Mason's Commission, and adhere to my Opinion that the patent appointing Messrs. Glasscock and Mason Remembrancer and Clerk of the First Fruits and Commissioners, is a Commission under the Great Seal, within the meaning of the statute of Henry the eighth, referred to in that Opinion, and that as Commissioners appointed by that Commission, they are authorized to make Valuations of Benefices under that statute; such powers are expressly given them by that Commission, as the Chancellor, Master of the Rolls, and Vice Treasurer, under that statute; and they are thereby appointed Commissioners. Now one of those powers which (if that Commission had not passed) would be vested in those three officers, is that of valuing Benefices.

The Commission is under the Great Seal, and I really do not see how it is possible to mistake or explain away the nature or extent of the powers vested in Mr. Shaw Mason & Co., patentees. Mr. Mason should, however, submit to the commands of the Lord Lieutenant.

(signed) C. E. Allen.

[This Opinion is dated 24th February 1823.]

No. 11 is a Letter from Mr. Mason to the Right Honourable Henry Goulburn, dated 28th February 1823, in which he appears to have transmitted the foregoing Opinion, and states his intention to conform to the established mode of entering into composition with the bishops and beneficed clergy, at the ancient or nominal Values, but expresses his regret in being under the necessity of doing so at a time when some of the parochial clergy were actually engaged in entering into composition with him for the true and just Values, adding, that when the beneficed clergy had once acceded to the measure, the dignitaries must have followed, so that a sum of nearly 100,000 *l.* would have been secured for the benefit of the Establishment, with an improving permanent revenue of 30,000 *l.*

On examining the above papers, it still remained uncertain what re-taxation took place in the Value of Bishopricks and Benefices; and whether, in case of re-taxation, there was any increase or otherwise of the First Fruits originally recorded; as also, whether Kilfenora, as stated, or any other bishopricks or benefices remained unrated; and if so, whether any First Fruits were levied thereon.

It appeared, therefore, necessary to ascertain these several facts for your information on the present occasion, and an application was accordingly made to Mr. Erck, Assistant Remembrancer of First Fruits, and he states that the Archbishoprick of Armagh appears to have been taxed in the 30th year of Henry the eighth, 183 *l.* 17 *s.* 1 $\frac{1}{2}$ *d.*; and that it was on a re-taxation, in the 15th year of James the first, rated at 400 *l.*, the sum which it at present pays for First Fruits.

That by the Ecclesiastical Valor it appears, from a Book of Visitation in the library of Trinity College, that the rectory of Moybolge *alias* Killniker, in the Diocese of Kilmore, was in charge 10 *l.*; and that in the 15th year of James the first, the vicarage of Moybolge was taxed 4 *l.*; but the rectory appears to have been rated on the first taxation, and the vicarage on the second.

That the vicarage and rectory of Castle Peter, in the Diocese of Kildare, are similarly circumstanced, the vicarage having been taxed in the 28th year of Elizabeth to 10 *l.*; and the rectory, in the 14th year of James the first, to 20 *l.* 16 *s.* 6 *d.*

That by the Ecclesiastical Valor it appears, from an Ancient Taxation in the library of Trinity College, that the prebend of Modebrege was in charge 3 *l.* 13 *s.* 6 *d.*, and the prebend of Kilgobboult was in charge 4 *l.* 10 *s.*, but that on the taxation of the Diocese of Lismore, in the 33d year of Elizabeth, the former was rated at 1 *l.*, and the latter at 1 *l.* 10 *s.*, a reduction instead of an increase.

That

That by the Ecclesiastical Valor it also appears that the rectory of Dungarvan, which is stated to be in the Diocese of Waterford, though really in that of Lismore, was taxed in the 29th year of Henry the eighth at 60*l.*; and that the vicarage of Dungarvan was at the same time taxed at 30*l.*, and the vicarage of Kilbrossane at 9*l.* 1*s.* 8*d.* But it further appears by the Valor, under the head (7) of the Diocese of Lismore, that by an Order of the Court of Exchequer, in Hilary 1668, the vicarage of Dungarvan was taxed at 22*l.* 10*s.* and the vicarage of Kilbrossane at 6*l.* 16*s.* 3*d.*, the First Fruits, which both the vicarages pay at present.

These sums are reductions from the original rate; the rectory of Dungarvan does not appear to have been re-taxed by the Court of Exchequer.

That the Diocese of Kilfenora was never rated to the payment of First Fruits, and none are levied to this day from either bishoprick or benefice.

That none of the dignities and benefices in the Diocese of Ardfert and Aghadoe were ever rated to the payment of First Fruits, with the exception of the bishoprick and six dignities, and on these alone First Fruits are levied.

That, in like manner, none of the dignities and benefices in the Diocese of Down were ever rated to the payment of First Fruits, with the exception of the bishoprick, four dignities, three prebends and one vicarage.

It being conceived that various Commissions, Inquisitions and other documents of record in the Exchequer might throw light on the subject, Mr. William Lynch, who is versed in inquiries of this description, was employed to make the necessary searches; and he reports, that there are various patents appointing officers of the First Fruits, among whom it appears, that soon after the statute of First Fruits, 28th Henry the eighth was passed, the King, by patent, appointed John Margett to the office of First Fruits.

That his successor, Henry Forrest, was appointed by patent of Queen Elizabeth to the same office.

That afterwards, James the first, by letters patent, dated in 1611, appointed Francis Edgeworth and William Crofton to the same office, and, in this patent, empowered them to levy, receive, &c. all First Fruits, &c. according to the rates and taxations thereof then made, and thereafter to be made.

That these three patents are amongst the earliest grants of the office now to be found enrolled; that as they were granted so soon after the passing of the Act, and at a period when the different taxations were making, copies of them might now be useful, in order to determine by their language whether the Crown intended that officer and his successors should have a power of rating and taxing, as also whether it was the intention of the Crown that new taxations should from time to time be made.

That, with respect to the Commissions for taxing Benefices, there are amongst the Inquisitions in the Exchequer several held in different parts of the kingdom, to find the Value of all Archbishopricks, &c. and Spiritual Promotions under the statute of First Fruits. That these inquisitions are extremely numerous in the different counties, and some of them recite certain words of the particular Commissions under which they were made; thus those in the county of Sligo state that they were made pursuant to Commissions, dated 25th of March, 27th of Elizabeth, and 1st of June 1595, issued to tax all archbishopricks, &c. not theretofore taxed throughout Ireland.

That there is an enrolment also of the letters of Queen Elizabeth, reciting the Commission to Sir Henry Harrington, whereby he was empowered for seven years to new tax all such livings as never before had been taxed.

That the Spiritual Promotions in the North of Ireland, Kildare, &c. were valued by Commission, dated 4th April, 14th James the first, which is enrolled.

That several Valuations were made in the reign of Charles the first by Commissioners, dated the 6th August 1629, &c. which directed taxations of those not heretofore taxed; that to one of those a schedule of some of the parishes to be taxed, but *yet untaxed*, is annexed; that in others, where the Commission is preserved, the authority given does not appear to be of a permanent nature, but the Commissioners are directed to make a return of same before the last day of Michaelmas Term.

In addition to the Commission of the 14th James the first, above referred to, abstracts of the recitals of those of Queen Elizabeth, and full copies of those of Charles the first's reign, can be procured, should an inspection of them be deemed necessary.

That in the Exchequer is preserved a parchment volume, called the "Valor Beneficiorum," which was used as evidence of the First Fruits payable out of each benefice. This volume is stated to contain the value of every diocese in Ireland, and that it was seemingly compiled from the original Inquisitions and other more ancient records of Valuation about the reign of Charles the second, as may be judged by the character of the writing. To each diocese is prefixed a heading, stating when the taxation was made; and to some dioceses there are two or three headings, according to the number of times when so many different parts of the same diocese had been taxed. That in some dioceses the First Fruits as therein rated, and consequently now paid, were taxed according to the Valuations made long before the statute 28th Henry the eighth had been passed. That Kildare Diocese, for instance, as to some of its parishes, is taxed according to a Valuation made in the 8th year of Henry the eighth; Leighlin rated by a Valuation made "of old;" as is also part of the Archdiocese of Armagh, which is stated to be by an ancient taxation.

The following list, however, will show the contents of the "Valor Beneficiorum," and the periods when the respective Valuations were made:

Dublin Archdiocese, part of	- 30 Henry 8.	Ardfert	- - - - [
Ditto	- - - - 14 James 1.	Tuam	- - - - 28 Eliz.
Ditto	- - - - 13 James 1.	Ditto Archdeaconry	- - - 5 Charles 1.
Kildare, part of, Ancient Taxation	- - - - 8 Henry 8.	Elphin, part of	- - - 28 Eliz.
Ditto	- - - - 28 Eliz.	Ditto	- - - 5 Charles 1.
Ditto	- - - - 14 James 1.	Aghadoe	- - - 28 Eliz.
Ossory	- - - - 29 Henry 8.	Killala, part of	- - - 28 Eliz.
Ferns	- - - - 29 Henry 8.	Ditto	- - - 5 Charles 1.
Leighlin, made and rated of old.		Clonfert, part of	- - - 28 Eliz.
Ditto, part of	- - - - 28 Eliz.	Ditto	- - - 5 Charles 1.
Cashel	- - - - 29 Henry 8.	Kilmacduagh	- - - 25 Eliz.
Waterford	- - - - 29 Henry 8.	Achonry	- - - 5 Charles 1.
Lismore	- - - - 33 Henry 8.	Armagh, part of,	- - - Ancient Taxation.
Cork, part of	- - - - 31 Eliz.	Ditto	- - - 30 Henry 8.
Ditto	- - - - 33 Eliz.	Ditto	- - - 15 James 1.
Cloyne, part of	- - - - 31 Eliz.	Meath, part of	- - - 30 Henry 8.
Ditto	- - - - 33 Eliz.	Ditto	- - - 38 Eliz.
Ross, part of	- - - - 31 Eliz.	Derry	- - - 15 James 1.
Ditto	- - - - 33 Eliz.	Clogher	- - - 15 James 1.
Limerick	- - - - [Connor	- - - 15 James 1.
Ditto, part of	- - - - Charles 1.	Raphoe	- - - 15 James 1.
Emly	- - - - 26 Eliz.	Dromore	- - - 15 James 1.
Killaloe, part of	- - - - [Down	- - - 15 James 1.
Ditto	- - - - 5 Charles 1.	Kilmore	- - - 15 James 1.
		Ardagh	- - - 28 Eliz.

It is stated by Mr. Lynch, that the ancient taxations alluded to in some instances in the Valor Beneficiorum, may be those Valuations of all the dioceses and parishes in Ireland, made in the fourteenth century, and the originals of which are still preserved in London. That this fact, however, can only be ascertained by a close comparison of the sums and parishes.

That on the 12th of July, in the 12th of Elizabeth's reign, there are of record nine several Commissions directed to the bishops of Meath, Armagh, Kildare, Leighlin, Ossory, Waterford, Lismore, Ferns and Cashel, in which is recited the statute of 2d Elizabeth, as to First Fruits, and those several bishops are respectively commanded that they should not instal, admit or induct any person into any dignity whatever, until he bring with him a writing, signed by the Clerk of the First Fruits, that the person so to be installed, &c. had paid same, and this under the penalty of 20*l.* for every such person so installed, &c.; and further, that they the said bishops should certify to the barons of the Exchequer, at Michaelmas, the names of all persons presented within their respective dioceses, that so the barons should, &c.

That this seems to be the origin of those Returns addressed by the archbishops and bishops to the barons of the Exchequer, which are preserved in the First Fruits Office, and which contain the respective promotions of the clergy throughout Ireland, from the reign of James the first to the present day.

That

That there are "Orders and Directions" for the better government of the revenue and its officers, sent by James the first into Ireland, and amongst those orders and directions are some of importance on the subject of the taxation of First Fruits, with reference to which in particular it is directed, that "whereas divers ecclesiastical livings, as the whole Diocese of Kilfenora and the possessions of the bishopricks of Cork and Cloyne, and all prebends, parsonages and vicarages, save six dignities of the Diocese of Ardfert, *are not as yet taxed* to pay First Fruits and twentieth parts, We will and require our deputy to order a Commission to the lord bishops and other Commissioners, whereof the clerk of the First Fruits to be one, to tax those and many others that *are not yet taxed* in that kingdom." And the King also thereby makes several further orders for diligent inquiries as to the impropriations pretending to be free from First Fruits and twentieth parts; but which were presentative, and shall be liable to same, and further gives directions as to the Clerk of the First Fruits.

That there is a letter of the 14th James the first, which states that the juries in the late Valuations rated them too high; that the prelates and clergy consequently complained, that if same were certified into the Exchequer *all* subsidies, First Fruits, &c. would *thereafter* be paid according to that rate; that as said taxations are not yet certified or put upon record, the King is pleased to *dispense with the strictness of the statute*, and to have a supersedeas issued to those Commissioners, and that the several bishopricks, &c. be valued anew at the rates therein recited, and that *thereafter* all subsidies be accordingly paid.

That accordingly a new Valuation of Armagh, Dromore, Derry, Kilmore and Ardagh, Clogher, Kildare, &c.

That King James issued directions in the year 1618, reciting that the principal judges of England and Ireland concurred that the profits of all parsonages, vicarages and benefices, with cure, from the time of their avoidance to the time that an incumbent be admitted, belonged to the King, and therefore directs now certain officers to levy and receive same.

That about the year 1612 there were "Rules and Orders" sent into Ireland, and given in charge to the Lord Lieutenant and all other the King's officers concerned in the Revenue; that in these the King notices that the livings in the North were still untaxed, "as they were for the most part before the plantation. That the greater part of the livings of the kingdom are, and have been taxed of old tyme, saving the North, and there cannot any new taxation be made by reason of a statute, formerly past in that kingdome, but upon special warrant and immediate directions from ourselfe, &c. therefore a Commission to issue to, &c. &c. for the taxing, as well of all other Ecclesiastical Livings in that realme, as were not formerly taxed, as also of *so many of the livings of the old taxations as were not formerly perfecte, &c.*"

That few of the above records are noticed in the cases relative to First Fruits, printed by Parliament, though many of them seem necessary for a due consideration of the subject; and in that view they were searched for and collected, and may be copied, if thought necessary.

Every effort will be made to procure any further information you may require on the subject, to enable you to give your Opinion,—

How far His Majesty is now empowered to issue a Commission for the Re-valuation of Benefices in Ireland, with a view to the levying of First Fruits.

OPINION.

WE have attentively read and considered the foregoing Case, together with the statutes and documents therein referred to, and are of Opinion that no power now exists in the Crown to direct a Re-valuation of Benefices in Ireland, already valued for the levying of First Fruits.

The authority to issue Commissions of Valuation was conferred by the 28th Hen. 8, c. 8, s. 2, (Ir.) We think, first, that it was not the intention of that Act, that successive Commissions should from time to time be issued for the Valuation of the same Benefice: and, secondly, that even if such a right were thereby vested in the Crown, it has since ceased.

First, it appears to us that there are no words in the Act itself clearly creating a power of Valuation, from time to time, according to circumstances; and that the uniform practice, as well in England as in Ireland, some eminent legal authorities, and the enactments of subsequent statutes, concur in opposition to such a construction of the Act of Henry the eighth.

In 3 Inst. 154, Lord Coke expressly distinguishes between the "very or true" Value of Benefices, with respect to penalties for simony, and "the taxation of" the Church," viz. for First Fruits; referring to the latter as a rate invariable, and under the improved value.

In 1 Black. Comm. 284, the Valuation made under the English Act 26 Henry the eighth, is stated to be the standard, according to which the charge for First Fruits had been uniformly made.

The 2d Eliz. c. 3, s. 4, (Ir.) exempts from the payment of First Fruits, vicarages, &c. under 6*l.* 13*s.* 4*d.*, as then rated; this appears to contemplate the rate as invariable.

The 2d & 3d of Anne, c. 11, (Eng.) which vests First Fruits in the corporation, enacts (s. 6) that the First Fruits shall thereafter be paid *according to the rates and proportions theretofore fixed*.

The English Acts, 5th Anne, c. 24; 6th Anne, c. 27; and the Irish Acts, 2d Geo. 1, c. 15, and 10th Geo. 1, c. 7, also appear to recognize the First Fruits as a fixed charge.

The 29th Geo. 2, c. 18, s. 1, (Ir.) recites the revenue from First Fruits to be computed at 300*l.* a year; an amount is also specified in the grant of Queen Anne; this seems to be irreconcilable with the principle of a varying or increasing Value,

The 1st Geo. 1, s. 2, c. 10, (Eng.) gives power to value Benefices under 50*l.* a year, with a view to exemption from First Fruits; when it became expedient to make new Valuations for that purpose, the interference of the Legislature was considered necessary, and a power to Re-value was given by 45th Geo. 3, c. 84. By the second section of that Act it should be observed the old Valuations are to remain unchanged as to First Fruits.

For these reasons we conceive that the 28th Henry the eighth did not give to the Crown a power of valuing from time to time; but, secondly, we think that if such were originally the nature and extent of that power, it was granted only as incidental to the right of the Crown to receive the revenue of First Fruits, and that it ceased with that right.

The 2d Geo. 1, c. 15, (Ir.) which confirms Queen Anne's grant, treats the powers of the Crown with relation to First Fruits as determined; no power of Valuation is given to the Board of First Fruits, and in the exercise of such a power, if now existing, the Crown could act only as a trustee for that Board; we see no reason for holding that the Crown is such a trustee.

We think it not immaterial to add, that as the grant of Queen Anne professes expressly to proceed on the assumption that the First Fruits revenue was a fixed and inconsiderable fund, it would be difficult, in our opinion, upon any other principle, to say that the Crown was not deceived in its grant, and that the grant itself might not be impeachable on that ground.

It further appears, from the patent of James the first, providing for the Valuation of the Ulster Benefices at a reduced rate, that the Valuations made by juries had been too high, and that if they should be confirmed, all subsidies, *First Fruits, &c. should thereafter be paid according to them*; and for the purpose of obviating such a consequence (which, if allowed, it is considered would be irreparable), the patent directs that the certifying of the Valuations into the Exchequer shall be stayed. This mode of proceeding, as it appears to us, would have been unnecessary had the Crown a power of directing new Valuations from time to time.

Upon these grounds, our Opinion is, that the Crown is not now entitled to Re-value any Benefice of which a Valuation has heretofore been made and certified.

4th August 1831.

(signed) T. Blackburne,
Richard W. Greene.

I CONCUR with the Attorney General and Mr. Greene in the Opinion, that the Crown is not now entitled to Re-value any Benefice of which a Valuation has heretofore been made and certified.

(signed) *P. C. Crampton.*

London, 8 August 1831.

(True Copies.)

Irish Office, London, }
22 August 1831. }

C. W. FLINT.

COPIES of the CASE AND OPINIONS of the
LAW OFFICERS of the CROWN in *Ireland*, on the
subject of the RE-VALUATION of the BENEFICES
to the FIRST FRUITS FUND, as taken on an
Address to His Majesty of the 14th of March last.

Ordered, by The House of Commons, to be Printed,
23 August 1831.
