Long before the 8th century payment of tithes was enjoined by ecclesiastical writers and by councils of the church ; but the earliest authentic example of anything like a law of the state enforcing payment appears to occur in the Capitularies of Charlemagne at the end of the 8th or beginning of the 9th century. Tithes were by that enactment to be applied to the maintenance of the bishop and clergy, the poor,@@1 and the fabric of the church. In course of time the principle of payment of tithes was extended far beyond its original intention. Thus they became transferable to laymen and saleable like ordinary property, in spite of the injunctions of the third Lateran council, and they became payable out of sources of income which were not originally tithable. The canon law con­tains numerous and minute provisions on the subject of tithes. The Decretum forbade their alienation to lay proprietors, denounced excommunication against those who refused to pay, and based the right of the church upon Scriptural precedents.@@2 The Decretals contained provisions as to what was and what was not tithable property, as to those privileged from payment, as to sale or hypo­thecation to laymen, as to priority over state taxes, &c.@@3 Various questions which arose later were settled by Boniface VIII.@@4 The council of Trent enjoined due payment of tithes, and excommuni­cated those who withheld them.@@5

In England the earliest example of legal recognition of tithes is, according to Selden, a decree of a synod in 786.@@6 Other examples before the Conquest occur in the Fœdus Ælfredi et Guthruni and the laws of Athelstan, Edgar, and Canute.@@7 The tripartite division of tithes does not appear to have been recognized in England by any genuine legal enactment except as what Mr. Freeman calls "a counsel of perfection.” @@8 The earliest mention of tithes in statute law proper is in the Statute of Westminster the Second in 1285, c. 5 of which deals with the patron’s writ de advocatione decimarum. From that date until the present year (1887) there have been a large number of Acts dealing with tithes,—the earliest which is still law being 2 Hen. IV. c. 4, making it an offence to purchase a bull from the pope for the discharge of land from tithes. The law has only attained its present condition by slow degrees, and by the combined effect of statutes and judicial decisions. The effect of the Tithe Commutation Act of 1836 has been to make most of the old law of merely historical interest, as in the course of the commutation all the questions of law as to prescription, exemptions, &c., would have been duly considered by the commissioners before the rent- charge was finally apportioned.

Tithes in English law are of three kinds,—predial, arising imme­diately from the soil, as of corn ; mixed, arising from things nourished by the soil, as of milk or wool ; personal, as of the profits of manual occupations or trades. The right to the last was considerably re­stricted by 2 and 3 Edw. VI. c. 13. They are also divided from other points of view into ordinary and extraordinary,—the latter being a tithe at a heavier rate charged on hop and market gardens,—and into great and small, as a rule those which go to the rector and vicar respectively. In general great tithes are predial, small are mixed and personal. It is not everything that is tithable ; ex­emptions are claimable either from the nature of the property or the privilege of the owner. Stone, lime, and such other substances as are not of annual increase are exempt. So are creatures feræ naturæ. Exempt by privilege are the crown by its prerogative, and spiritual corporations in accordance with the maxim recognized equally by canon and common law, ecclesia decimas non solvit ecclesiæ. Thus a rector pays no tithes to his vicar, or a vicar to his rector. On the same principle it is a ground of exemption that lands were anciently the property of the privileged orders (at the time of the dissolution of monasteries, the Cistercians and Hos­pitallers), or were lands of the greater monasteries discharged from tithe by 31 Hen. VIII. c. 13. Exemption may also be claimed by redemption, by substitution of a rent-charge, by a real composition (that is, an agreement between the incumbent and the landowner, with the consent of the ordinary and patron, for the discharge from payment of tithe by means of satisfaction by giving of land or some other real recompense), by a modus (that is, a partial discharge owing to some customary method of tithing or modus decimandi), or by prescription under 2 and 3 Will. IV. c. 100. Tithes in extra- parochial places belonged at common law to the crown, except by custom. Tithes are incorporeal hereditaments (see Real Estate), and may be dealt with like any other real estate of that nature. Thus they are, if in lay hands, tenements which may be entailed or leased, are subject to dower and curtesy, are assets for the pay­ment of debts, and are (whether in lay hands or not) within the Statute of Limitations. They do not, however, issue out of the land like rents, but are collateral to it. Accordingly tithes are always freehold, even though they are charged on copyhold lands. Tithes

are presumed to go to the parson of the parish. This presumption may be rebutted by proof that some or all the tithes go to the vicar, where the rector is in holy orders, or to a lay impropriator. It is said that about a third part of the tithes in England is in the hands of laymen. At one time arbitrary consecration of tithes was allowed,—that is, payment to any priest at the will of the tithe­payer. This was forbidden by a decretal epistle of Innocent III., about 1200. “This epistle decretali,” says Coke, “bound not the subjects of this realm, but the same being just and reasonable they allowed the same, and so became lex terræ.”@@9 A vestige of the arbitrary consecration perhaps exists in the rarely occurring right of the parson of one parish to a portion of the tithes of another. Tithes are payable by all persons alike, whether members of the Church of England or not. Special enactments deal with their recovery from Roman Catholics and Quakers. Up to 1836 tithes were paid in kind, unless where any other method of payment applied in a particular case, such as a modus in the nature of a pecuniary compensation, or a pecuniary payment under the terms of a public or private Act, as in the city of London by 37 Hen. VIII. c. 12, 22 and 23 Car. II. c. 15, and other Acts. Even before 1836, however, the bulk of the tithes had been commuted, but such commutation was in ordinary cases good only during the tenure of a particular incumbency, and did not bind the incumbent’s suc­cessors. The Act of 1836 merely completed and gave legislative sanction to a tendency which had been long on the increase.

The effect of the Tithe Commutation Act, 1836 (6 and 7 Will. IV. c. 71, frequently amended since), was to substitute for the tithe paid in kind or the fluctuating commuted tithe a rent- charge—commonly called the tithe rent-charge—equivalent to the market value from time to time on a septennial average of the exact quantities of wheat, barley, and oats which made up the legal tithes by the estimate in 1836. Excepted from the operation of the Act are (unless where there is a special provision approved by the commissioners) tithes of fish or of fishing, or any personal tithes other than those of mills, or any mineral tithes, or pay­ments or rent-charges in lieu of tithes in London and other places, resting on the authority of local Acts. The Act has not been wholly successful in its working. By the transfer of estates, and by changes in local agriculture, the old estimates are no longer fairly applicable in all cases. The commutation has been, on the whole, to the advantage of the landowners, for the tithe remains fixed while the rental of land since 1836 has risen, accord­ing to Sir James Caird, from 33 millions to 52 millions per annum. Commutation under the Act is either by a voluntary agreement, confirmed by the tithe commissioners,@@10 or by an award of the commissioners. The machinery for determining the tithe for any given year is as follows :—the Board of Trade is to cause the average prices per imperial bushel of each sort of British corn to be computed from the summaries sent by the inspectors of corn returns, obtained from the averages stated by the inspectors, and published in the London Gazette weekly, quarterly, and yearly, and a septennial average is to be obtained from the sum of the annual averages divided by seven (45 and 46 Vict. c. 37, supersed­ing sect. 56 of the Act of 1836). The rent-charge is computed on the basis of one-third for wheat, one-third for barley, and one-third for oats. The respective prices were originally fixed by 7 Will. IV. and 1 Vict. c. 69, s. 7 (as altered by the London Gazette of 9th December 1837), at 7s. 1¼d. for wheat, 3s. 11½d. for barley, and 2s. 9d. for oats per bushel. The prices for 1887 were 4s. 11d., 3s. 10d., and 2s. 7½d. respectively. Owing to this fall in prices, tithe rent-charge which stood at £100 in 1836 was worth in 1887 only £87, 8s. 10d.

After the coming into force of the Act of 1836 all lands were discharged from tithe, and the tithe rent-charge was substituted, payable by equal half-yearly payments, each 1st of July and 1st of January. A tenant paying the rent-charge is to be allowed the same in account with his landlord. The charge thus ultimately falls upon the landlord, whether or not he pays it in the first in­stance to the tithe-owner. Land may be given instead of a rent- charge where the tithe-owner is an ecclesiastical person. Gardens or small tenements may be exempt from tithe by 3 and 4 Vict. c. 15. Later Acts give a power of redemption of rent-charge in the case of land required for public purposes, settled land, &c. (9 and 10 Vict. c. 73 ; 23 and 24 Vict. c. 93 ; 41 and 42 Vict. c. 42 ; 45 and 46 Vict. c. 38). Merger of the rent-charge is allowed by tenants in fee or in tail under the Act of 1836, and by persons having powers of appointment, tenants for life, and owners of glebes under 1 and 2 Vict. c. 64 and 2 and 3 Vict. c. 62. The mode of recovery of arrears provided by the Act of 1836 was a new one. Up to that time arrears could not be distrained for, unless in exceptional cases. The remedy of the parson was a suit for subtraction of tithes, which, by 2 and 3 Edw. VI. c. 13, could only be brought in a spiritual court. The remedy of the lay holder was a suit or action in any temporal court by 32 Hen. VIII.

@@@1 See Dante, *Par.* xii. 93, *“decimas quæ sunt pauperum Dei.”*

@@@2 Pt. it 16, 7.

@@@3 Bk. iii. 30.

@@@4 *Extrav. Comm.,* bk. iii. 7.

@@@5 Sess. XXV. 12.

@@@6 C. viii. s. 2.

@@@7 The grant said to have been made by Æthelwulf in 855, to which the general payment of tithes in England has been commonly traced, appears not to rest on satisfactory evidence ; see Hallam, *Middle Ages,* Supplemental Notes, p. 180.

@@@8 See Rev. Morris Fuller in *National Review,* November 1886.

@@@9 2 *Inst.,* 641.

@@@10 By the Settled Land Act, 1882, the tithe commissioners have, with other bodies, been merged in the land commissioners constituted by the Act.