

bearing of the following cases :- Mesars. Knaresborough, Browne, Meade, and Sheehy (Queenstown).

diocese of Cork, Stepney, Ross and Stepney being the la upon the construction of the 43d section of Gooldwin's Act impropriators, to apply to have the tithe rent charge on tha of the 4th Geo. IV., cap. 99, which was the only section parish varied. It was reduced in 1854 by the magistrate: material to the present question. With respect to all others,

chapel of Mynane bridge.

Mr. DAVID HALL proved to having received the tithe the last being 8 days previous to the Sessions, might apply to magistrates reducing the rent charge. Hodder, who was the principal proprietor there.

rule laid down in Fermoy-----

perfectly competent for them to take a wholly different viev ing to which they might perceive the question was this :- It of the case from what I took in Fermoy of the cases that came was proved to them that the price of wheat as mentioned in before the Beach there.

for the last seven years to be £1 13s. 01d.

1854 was £1 7s. 11d. There was another case, in which court should think fit, and according to the present prices. his friend Professor Barry took the opposite view of the The argument of his learned friends Mr. Chatterton and Mr.

JAMES SHELTON proved the posting of the legal notices crop in each succeeding year, until it was thought advisable In Magourney the owner is the Rev. John Denis Penrose. on the church door of the parish of Magourney and Kil- to do away with that system and turn it into money payments.

in the certificate was £112s. 1d. The magistrates' order difference between the mode of levying the rent-charge in this bore date the 23d of September, 1834, and the average price country at present and England was, that while in the latter in it was £1 7s. 1d.

ney; received the tithe rent charge for him.

The CHAIRMAN-Who has the parish of Ballinaboy?

Mr. M'CABTIE said the average price of corn mentioned in pointed out by it, as it at present stood. His learned necesary legal notices, the original certificate, which bore date the 13th December, friends were of opinion that the court was at liberty, and 1833, was £1 12s. 1d.; the magistrates' order bore date the ought to stretch the words of the Act in favour of justice 3d December, 1854, and the average price of wheat at that and convenience, and they argued with considerable force time was £1 7s. 1d.

Rev. Mr. Hartoppe.

order in the first parish, was £1 7s. 01d., he ought bhowed that it was absolutely necessary to change the to have said, £17s. 2d. Mr. M'Cartie then in stating the standard every seven years, unless the price was shown to case, said he argued it before his worship at the other side vary to the extent mentioned in the Act. They (Messrs. of the question a short time ago in Fermoy, and hoped as Chatterton and Johnson) then said they did not require the be had then convinced his worship on one side, he would court to take any great liberty with the language of the do so now on the other. (A laugh.)

guments to put forward, which appeared to him to deserve tatis mutandis. The proposition would remain exactly the consideration. As some of the magistrates who were now same as this mentioned in the original certificate. Mr. present did not hear the arguments in a similar case at M'Cartie then gave an explanation of the Act to which

Fermoy, he would relate in as brief a form as possible the ar-Mr. JUSTIN M'CARTHY, instructed by Mr. W. V. Greggguments of the learned counsel who were there engaged, Mr. said he appeared in the matter of the parish of Kilpatrick Chatterton and Mr. Johnson. The question was raised JOHN M'GUNNA proved the posting of the necessar; Mr. M'Cartie then read the forty third section of the Tithe legal notices on the ruins of Kilpatrick Church, in the Composition Act, which stated that between the 1st of May county of Cork, and also on the church of Tracton, and the and the 1st of October, in the third year after the 1st of Mr. M'CARTIE then produced attested copies of the and so in every subsequent third year the incumbent or original certificates, attached to which was the order of the tithe owners or three land-holders charged with £3 a year to composition money on notice being given on two Sundays, rent off the parish in question; received it from Mr. Geo. Quarter Sessions to alter the amount of composition for the ensuing three years in proportion to the average price of Mr. M'CARTIE said that in this case, according to the wheat or oats for the three years, and if the price varied by one tenth from that stated in the certificate of composition, His WORSHIP-This is quite an independent cour; then the composition should be increased or diminished for the and the magistrates here have exactly the same weight and next three years; and so on from three years to three years. voice in the jurisdiction of the case as I have. Of course, it is That was the section on which the question arose, and accord-Mr. D. CONNELLAN proved the average price of wheat by the last finding of that court to £1 7s., a few years since. Mr. BROWNE-Which corn was the standard of compa. one-tenth greater than £1 7s, though it may not be one-Mr. M'CARTIE said wheat. The price in the origina that under the section, and according to these facts, the certificate was £1 12s. 01d., and the reduced average in applicants were entitled to vary the composition as the Mr. GREGG-The parish of Magourney and Ballinaboy, history of the tithe question, and showed that the clergy position was established. Money was henceforth paid, and the Mr. GREGG-No, there is not. The certificate is the standard of payment ascertained in every seven years immecertificate of the nuited parishes, but there is only one distely preceding a new composition. This would prevent Mr. M'CARTIE said the average price of wheat mentioned making the payments follow the price of wheat. The only the composition was changed every year, in Ireland it was Mr. WM. PENROSE proved that the Rev. J. D. Penrose changed every seven years. No change however was to take was his brother; he was the rector of the parish of Magour- place in Ireland, even at the end of the seven years, unless the price was more than one-tenth of the original certificate. Though the court should be of opinion that the act of parliament should be interpreted as it had been by Mr. Chatter-GEORGE CARPENTER having proved the posting of the ton, yet they had not the power to force its language and destroy its meaning, because some inconvenience was that in requiring these alterations, it was unnecessary to ex-Mr. JAMES RUSSELL proved the receipt of tithe rent tend the meaning of the Act beyond its literal interpretation. charge off this parish from the occupiers of the land for the Having read another section of the same Act in reference to the system of variation, as argued by Mr. Chatterton, he Mr. M'CARTIE said that he had told their Worships that continued to say that the composition in the present instance the average reduced price, according to the magistrates was established in 1830, and never raised until 1854, which section, but he (Mr. M'Cartie) would ask the court to give a CHAIRMAN-It is very likely you will succeed both literal interpretation to this statute, and as regarded the words "such" and " like," he would ask the court not to Mr. M'CARTIE thought he would, because he had new ar- confound them by giving them the same meaning, but mu-

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Barry) had now respectfully to submit was the only one point of law, and having regard to the legitimate construction of the section of the Act of Parliament, the Bench could have come to, and which he hoped to convince the Bench he now addressed was the only one that could be adhered to. With a view to the interpretation of the section of this Act of Parliament, he had heard from his learned friend that the counsel for the clergy in Fermoy went into the original learning applicable to the law of tithes, and he (Pro fessor Barry) was quite satisfied that whatever learning and whatever of research could have been made applicable to that subject his friends were fully capable of; but he was justified, having regard to the whole course of legislation on this subject, and having regard to the law of tithes as it existed previously to 1823, and up to 1838, in saying that he was quite as well entitled to say that if there were anything in that argument it operated as much against the counsel on behalf of the clergymen or impropriators here as it did in their favour; because it was 1823 had regard to it, and any person who took the trouble to look into matter almost of notice with that compact entered into in Hansard would see that the settlement proceeded to point

were entitled to, and what it was practicable for them to get but he (Professor Barry) saw a fallacy in them-namely, in under the circumstances of the country at that period; and asking their worships to do that which the legislature never they found it ultimately resulted in the clergy assenting to a intended to do While the legislature regarded the vested rights deduction of 25 per cent., getting in return prompt payment, of the clergy, they had regard also to a very important element and a first charge upon the lands; so that any argument in the consideration of it-namely, the circumstances of the deerived from the rights of the clergy to tithes under com- country, the circumstances of the landed proprietors, and the mon law could not be pressed into the service of any disturbances arising out of the state of affairs; and it was at person seeking to give a construction to a section of the Act the period of the passing of this act contemplated by the legis. of Parliament now said to be put upon it by the Rector of lature, and expressed on the face of the statute, that this subthe Parish of Magourney. His learned friend, feeling that ject should be settled as far as it was then possible to settle he should adhere to the real construction acted upon by all it, and afterwards as it was finally settled by the last act in the other tribunals, endeavoured to convince the Bench that 1838, by which the matter proceeded, not upon the common he had what he (Prof. Barry) might call the "golden rule" law rights of the clergy, but upon the amount of the tithes -the legitimate construction, in his favour; but he thought to which they were entitled, and to what was right he would be able to show their Worships that there and practicable, and what could be made a permawas a fallacy in his argument. They would now bear nent and ultimately a final arrangement. Then, was it with him while he called their attention to the real con- not vain for his learned friend to argue that any speculative struction acted upon by their Tribunals with regard to inconveniencies or absurdities which might be suggested as Acts of Parliament, and to the decision of Mr. arising from one or other construction of this section of the Justice Tindal in delivering the opinion of the Act of Parliament ought to take them out of the consideration judges in the Sussex peerage case. He said that if the of what the intention of the legislature was upon its intro-

he referred, and contended that the plain meaning | did best declare the intention of the Legislature. (Prof. of it was that these tithes should be raised or | Barry then quoted several other opinions bearing on the same lowered every seventh year according to the stand. | point.) Now, if they would look carefully at the section ard corresponding with the rise or fall in the price of | which was embodied in this case, and upon the construction corn, He then gave a case in point: supposing that in the of which this question should turn, they would see that it event of a French or American war the price of corn, was just as consistent, and much more in accordance with the which was previously 30s., was raised to £3 a barrel, it was strict literal interpretation of the phrase, that the original clear that in 1868 the clergymen would be entitled to double certificate should be, as it was expressed there, made not the amount of rent charge previously received by them; and only the standard of composition, but the standard of composupposing that between 1868 and 1875 the price fell to 28s. sition as expressly declared by the original certificate, a barrel, it was just as clear, according to the construction of Notwithstanding, yielding to the necessity of his position, his the Act, that the landed interest should have to pay the learned friend said that he would not ask them to go beyond clergy the amount of tithe chargeable on £3, as the difference the literal construction of the section of the Act, or to imbetween 28s. and 30s. was not one-tenth of the original sum port words into it. Now, to his (Prof. Barry's) mind, it was (28s.). He concluded by asking their worships to adhere to impossible to argue for the construction he contended for. the strict literal interpretation of the Act of Parliament. unless they imported into it what he asked them to do a Professor BARRY (instructed by Mr. H. B. Julian) said -- that the order of the justices was to be substituted for the he appeared there on behalf of the parishioners of Magourney ' original certificate of the Commissioners. Now, could they imaand Kilcullen. He certainly entirely acquiesced in the opi-, gine a greater departure from the Act of Parliament? The nions of the learned chairman, that his friend Mr. M'Cartie | Legislature, when framing this Act of Parliament, had regard had argued the case with peculiar ability; but if he had done | not only to the strict legal rights of the clergy at that period. it with the ingenuity of a lawyer he (Professor Barry) should | but also they had regard to what it was practicable for them say that he had not forgotten the ingenuity of an advocate, to levy, and what it was possible for them to get. Surely for while he put forward the reasons and the arguments of Mr. | they all remembered the Act by which it was found necessary Chatterton and Mr. Johnson at Fermoy, he did not think it to relieve their wants-the Million Act; and any one who took part of his duty to go into the very clear answer which he the trouble to look into that Act would see that it sustained the himself gave upon that occasion, and which terminated in a view taken by the Bench at Fermoy on this question-that decision on the part of the magistrates which he (Professor | the true standard of comparison was the original certificate,) and that it was determined at that time by a series of enactments resulting in a permanent settlement of the question. While his learned friend professed to alhere to the language of the section, he asked their Worships to import into that portion of the section language which the Legislature had not | thought proper to introduce into it.

Mr. GREGG-He did no such thing. Professor BARRY-Namely, that it should be the average, not according to the original certificate of composition with reference to comparison, but with reference to the last order of the Justices. He asked them to increase the tithes because there was an increase in the price of corn of 10 per cent., not from the period of the original certificate, but from the period of the last order. Was be to be told that his learned friend was adhering to the language of the section when he asked them to do that? He (Professor Barry) said there was no declared intention of what his friend asked them to do being the intention of the Legislature; and their worships would have to depart from the literal words of the section, and would have to import words into it, to arrive at the decision which he asked them to do. No doubt Mr. M'Cartie had the merit of argning the case in an able and lawyer-like manner; he had not forgotten the out the amount of tithes payable to the clergy, what they | duty of an advocate in pressing his arguments upon them; words of a statute were in themselves ambiguous, then no duction of the enactment-namely, to make the tithe commore could be necessary than to expound their meaning in position more easy, more certain in amount, and giving the their natural and ordinary sense, for the words of the statute clergy this remedy, that wherever a variation took place from the standard thus relied on-namely the original valuation of the commissioners and their original certificate and when-

