

Provinces. Others place the Beginning thereof under <sup>Philip</sup> August, in the Time of the Holy War. A third Sort derive it from Charles Martel. Without standing to dispute which of these are most in the Right, I shall content my self to observe, that Christian Princes, to oppose the barbarous Huns Goths and Vandals carrying all before them in Europe in Justinian's Time were in a Manner necessitated to dispose of the Revenues of the Church, and to make Alienations and grants thereof to their Lay Subjects, in Order to engage them to their Service in maintaining an expensive War, when Religion, <sup>Liberty</sup> Property and all was at the Stake. This was sometimes done in a Manner grating and disobliging to the Church. But I find none so much blamed and spoken <sup>against</sup> in History on that Account as Charles Martel: because he would not make Head against the Moors, when they, having subdued Spain, were going to invade France, till once the Clergy resigned their Tithes to him for Payment of his Army, and did not restore them according to his solemn Promise, after God had blessed him with Success and Victory. For which the Clergy have endeavoured to blacken his Memory, by making a Story to pass of a Revelation to St. Eucherius Bishop of Orleans, that Martel was damned for robbing the Church: altho Eucherius as Baronius reckons, died some Years before him and so could see no Visions after his Death, and Fiden (Hist. of Tithes Chap. n. 3) disproves that common Tale of Martel's taking away the Tithes, and giving them to his Soldiers. Pepin and Charles the Great used their best Endeavours to get the Tithes settled upon the Church. But in after Ages, Princes and others disposed of their Tithes as they pleased, and commonly to Monasteries and Nunneries Cathedral and Collegiate Churches.

When the pastoral Care was divided into Parishes, the Tithes of each Parish were set off for a Provision to their particular fixed Minister. Which was confirmed in that provincial Council held in Scotland in the Year 1225 (Cap. 38) under Pope Honorius 3: of the Statutes whereof there is a Copy extant in the Chartulary of Aberdeen. By this Method, the greater Portion of Tithes fell justly to his Share, who had the wider Parish, and consequently the more weighty Charge. The ecclesia matrix was founded jure communium in the Right of all Tithes within its Territory c. de decimis 16. qu. 1. Where a new Church was erected with the Privilege of a parochial one and independent on the former, the Rectors of both had Right to the Tithes within their respective Bounds or Precincts c. ad audientium 2 de eccl. edific. vel repar. Bengard de benefic. ad verb. milita cap. 4. n. 31. In the Case of Chappels erected in Parishes without a parochial Privilege, and served by Vicars put in by the Pope of the mother Church for his own Assistance, and for the Accomodation of the Parishioners; the Tithes ipso jure belonged to the Parson c. ecclesia, et duo sequentes 16. qu. 1. Bengardus Ibid. n. 32. That is the Title of Common Right for the Vicar's Subsistence, an inferior Title of other annual Increase was

ordinarily

ordinarily set apart. Which gave Occasion to the Distinction of Parsonage and Vicarage Tithes. Those other Vicars whose Business it was to officiate in parishes Churches annexed to cathedral and collegiate Churches and Monasteries, were maintained after the same Fashion; the Parsonage Tithes being due to the ecclesiastical or conventual Body. The proper Minister of a Parish had a presumptive Right of Parson to the Parsonage Tithes, and if a Vicar to the Vicarage c. cum contingat 29. c. quoniam. 13. X. de decimis, Brunem. de jure eccl. Lib. 2. Cap. 6. n. 11. Even to the Tithes of novalia Ibid. n. 9. Camis. de decim. Cap. 11. n. 2. By novalia are understood Lands recently plowed up and made usable, which Time out of Mind had lain Wild and unlaboured c. quid per novale 21. X. de verb. signif. This parochial Right was in a Manner ratified by the Parliament 1409 when it was declared a Crime to intrude with Tithes without a Right from the Parson or Vicar Act 4. Oct. 2. J. 4. And in the Year 1501 when all Benefices were ordained to be provided only in Favour of actual Ministers Act 102. Dec. 7. J. 6. So that parochus qua Minister might have effectually pursued Payment without any further Instruction; Robuff de congrua portione n. 10 et seqq. Barbos. de offic. et pot. paroch. cap. 20. §. 2. n. 8. 9. And tho ordinarily the King's Gift be sufficient against any that shew not a better Title, his Majesty being the common Author and Fountain of Rights; yet the same in Favour of one of the Prebends of the Chappelroyal, and a Decree conform with Collation and Institution, was not sustained to carry the Right of Tithes from the Ministers Treasurers, who produced no other Title than his Fact; unless either a Mortification of these Tithes to the Chappelroyal, or Possession were instructed 27 June 1665 Ferguison contra Stewart of Ascog. Presentation to a Church which is a Parsonage was sustained to intitle the Minister to the Tithes, tho he was not presented to be Rector or Parson Dirlet. Decis. 112. Falgel contra 26 November 1667. And vicarage, as well as parsonage were found to belong jure communium to the parish Minister, unless Prescription of Freedom were proved, or a better Right in some other made appear; without Necessity upon the Minister to instruct Disposition, but only his Presentation and Admission to the Church with a Decree conform 24 January 1679 John Stoun contra Stewart, Stair Lib. 4. Tit. 24. §. 4. But this presumptive Title of a Minister to the Tithes of his own Parish, might have been excluded 3<sup>o</sup> By a clear Right to the Tithes in the Heritors own Parson 4 Feb. 1601 Robertson contra Arbuthnot or in the Parson of any other 27 June 1665 Ferguison contra Stewart. 2<sup>o</sup> If a Minister had a modified or local Stipend, he could not claim Right to the Tithes of his Parish, except in the Terms of the Decree of Modification or Locality. Therefore Use of Payment to a Minister having Right by Assignment to the whole Parsonage Tithes, relative and conform to a Decree of Locality, wherein three Chalders of Victual only were ordained to be paid to him