

him forth thereof; did not defend the Heretic from being liable to pay the overplus  
Tithe to the true Titular 29. Novemb. 1699 Bruce contra Arnot.

The Pope, as universal Bishop, pretending a sovereign Right to all the  
Revenues of the Church, took upon him to alienate Tithes to Monasteries at Rome  
Nor hath his Holiness stood to sell them to Laymen: for all the Tithes in Italy, and  
most of those in Spain, are either appropriated by him to Monks; or feued to secular  
Princes and Laicks. He was once pleased to gratifie our K. James the fifth with  
the Tithes of all the Portonages within Scotland for 10 Years, Buchanan Hist. Lib.  
14. Not only did he assume the disposing of Tithes that were in the Hands of  
Churchmen, but even of such as Infidels possessed. So Urban 2. gave to Peter of  
Arragon, and his Soldiers, the Tithes of all Lands he should recover from the  
Saracens. As the Pope disposed of Tithes freely without Controul; he also gran-  
ted Dispensations from Payment of them to such and such religious Orders as he  
thought to have intirely depending upon the See of Rome, particularly to the  
Cisterciens, Hospitallers, and Templars, as to Possessions they had before the Lateran  
Council. To secure which papal Grants of Alienation and Exemption, from con-  
= trolled in Question upon the Account of the <sup>divine</sup> Right of ~~Divine~~ Tithes: the School-  
= men maintained a Competency out of them to be due to the Clergy de jure di-  
= no for their Maintenance; but that the particular Quantity of a Tenth was of  
ecclesiastical Institution, and might be determined by humane positive Law, ac-  
= cording to the Circumstances of Times and Persons. Our Law to exclude such pa-  
= pal Alienations and Exemptions to the Prejudice of the parochial Ministry,  
made it criminal to take a Right of Tithes from any save the Parson or Vicar  
or their Farmers Act 7. Car. 2. c. 4. For the Kings and Parliaments of Scot-  
= land have been always zealous in maintaining the regale and Rights of the  
Church against all Romish Usurpation. But at the same Time Tithes in this  
Country were frequently mortgaged to cathedral and collegiate Churches, Chap-  
= els Monasteries and Minneries by the Founders and Benefactors; and parish  
= Churches with their Tithes were often annexed by the patrons.

The Clergy have used mighty Endeavours to get the Tithes out of Lay Hands  
nor have Bulls from Rome been wanting to that Purpose. For encouraging all  
Men to give liberally to the Church, and withall to remove any Objection that  
might arise, from Churchmen's dilapidating or giving away their Revenues; ma-  
= ny canonical Decrees were made against the Conveyances of Tithes to Lay-  
= men. But the first effectual Law that came from Rome for hindring Tithes  
to pass from Hand to Hand in common Course, was the famous Canon prohibe-  
= mus 19. de decimis made in the Council of Lateran under Pope Alexander  
in the Year 1179 whereby Laicks withholding Tithes on the Peril of their  
Souls, are discharged to make them over to Laymen, and the Receiver that  
does not restore them to the Church is not to have Christian Burial. Our Law  
hath

hath so far gone in with the Canons, that Tithes in Scotland could not since the La-  
= teran Council be set in Fee, <sup>or long Term</sup> before K. Charles the first's Decret Arbitral upon  
the Surrenders. Decimæ inclusa nunquam antea separate, that is, Tithes feued out  
with the Stock for a joint Duty, which for a long Time beyond the Memory of  
Man, have always gone along consolidate with the Stock, were ever understood  
and sustained in our Law, as an Exception without the Force of the Canon's pro-  
= hibition; and Laymen might have prescribed a Right, <sup>to such</sup> Tithes. Because these  
are presumed to have been feued out by Churchmen, as Proprietors of both Stock  
and Tithes before the Lateran Council.

In Order to make this mysterious Subject of Tithes some better understood,  
than generally hitherto it hath been, I propound to explain, 1<sup>o</sup> The several  
Kinds of Tithes. 2<sup>o</sup> To set forth the different Rights of Tithes, ~~that are~~  
~~lawfully acquired~~ 3<sup>o</sup> How Rights, <sup>of Tithes</sup> are made effectual by Payment.

### Sect. I.

#### The several Kinds of Tithes.

Tithes have been variously distinguished by those who have handled this Mat-  
= ter, according to the different Views they had of it: But I think they may not  
improperly be divided into Tithes under the Law and Tithes under the Gospel.

Under the Law a tenth, besides the first Fruits, was paid to the Levites; and  
the Tithes of that to the Priests called decima decimarum, or the Tithes of Tithes. A  
second Tithes was taken out of the Peoples Nine Parts, and spent the first two Years  
at the Temple in Feasts; not unlike the Agape of the primitive Christians.  
The Rabbin's make also mention of the poor Man's Tithes which every third Year  
was bestowed at Home, within their own Gates upon the Poor and Levites.  
But whether that was in the Place of the Tithes for Feasts, as Mr. Felton  
thinks, or a third extraordinary Tithes distinct from both the Levites Tithes  
and it, according to the Opinion of others; they are wiser than I can tell.  
Which Law concerning the Payment of Tithes among the Jews, was calcu-  
= lated only to their particular Constitution of a Theocracy: where the Share  
paid in other Nations to their King, was reserved by God in a Charter from  
Heaven to himself, and his immediate Officers the Priests and Levites; who  
had not, as our Churchmen, the Charge of Souls, and were excluded from all  
other Part and Inheritance of the Land of Judaea.

Tithes under the Gospel, may be considered not improperly under the No-  
= tion of extraordinary and ordinary Tithes.

Extraordinary Tithes were an improper Kind of Tithes, such as 1<sup>o</sup> Those  
imposed by the Pope or by him and the King, to serve a Turn of some pub-  
= lic Exigence of Church or State, as for carrying on a holy War against  
Infidels