

Infidels or Hereticks; viz. decime papales decime, saladinæ laid on for recover-
-ring Jerusalem out of the Hands of that victorious Infidel Saladin, who possessed
himself of it 1100. Some Grants of Tithes of this Kind in Favour of our Kings
are extant in Fordon's History. 2^o The second Tithes of Casualties of Ward-
-ship, Marriage, Fines, Escheats, and inlaws of Courts, of which there is Men-
-tion in some of our old Charters; may not improperly be brought under the
Denomination of extraordinary Tithes.

Ordinary and Proper Tithes, are divided either with respect to the Subject
-titable, or the Persons payable to.

1.

Ordinary Tithes with respect to the Subject titable.

Tithes are commonly so distinguished into personal, predial and mixed
Tithes.

Personal Tithes arise out of a Man's free gain by his Trade or personal
Labour and Industry. For which personal Tithes Charles the Great is the first
whom I observe to have made a Law (Meno 709. c. 17.) but these Tithes
take no Place in Scotland Stair Lib. 2. Tit. 8. s. 6. and have every where gone
into Disuse Carproz. jurispr. consist. Lib. 2. Tit. 8. def. 131. n. 3. Canis. de
-cim. cap. 2. n. 3. Yet 40 Years Payment to the Vicar of a certain Duty
by Weavers out of each Loom; tho' a Kind of personal Tithes, was sustained
to make them liable in all Time thereafter 29 Novemb. 1670 Birnie con-
-tra E. Nithsdale and his Tenants.

Real or Predial Tithes, are such as are payable out of the natural Fruits
or Product of the Ground or Water Stair Lib. 2. s. 5. Of this Kind are the Tithes
of Corn, Wine, Fish and living Creatures &c.

By mixed Tithes, the third Member of the common Division, the Doctors
mean such as are payable ~~out of~~ out of the industrial Profits of Land. But
there seems to be no Reason of admitting the same as contradistinct to the
-other two, and the canon Law mentions only two sorts of Tithes predial and
-personal C. 20. X. de decimis. If the Concurrence of personal Industry
towards the Production of titable Fruits did afford the Denomination of
mixed Tithes, all predial Tithes would be such: seeing humane Pains or In-
-dustry doth in some Measure concur to make Way for all predial Tithes.

2.

Ordinary Tithes with respect to the Persons payable to.

These are divided so into civil and ecclesiastick Tithes.

Under civil Tithes I comprehend those following so that share claimed by
the Roman Emperors out of Mines called canon metallicus L. 2. C. de met-
-allis

And by our Kings out of Mines of Lead, Iron or Copper. N. Kenise Observ. on
Act. 12. Par. 1. g. 1. And out of Prizes or Seizures made by Privateers Stair
Lib. 2. Tit. 2. s. 4. And Samuel when he is exposing the Severities of Monarchy,
insinuates that the ^{being the} Israelites desired to have would take the Tenth of their Seed
and of their Vineyards &c. i Sam. 8. 15. 16. 2^o Decime inclusæ, which having
been always within the Memory of Man feued promiscuously with the Stock
for a joint Duty, differs from other Tithes in many Privileges and Speciali-
-ties. They cannot be valued, nor burdened with Ministers' Stipends tho' those
were not Sufficiently of other Tithes in the Parish. Because 1^o Included
Tithes or those not separated from the Stock are considered as no Tithes. 2^o
K. Charles the first having been pleaded by his royal Decree Arbitral rati-
-fied by Acts of Parliament, to burden only such Tithes with Ministers
-stipends, as were acquired from him or his Father by Lords of Election or
-Feud since the general Annovation 1507 the Rights whereof his Ma-
-jesty might have quarrelled as contrary to Laws Rights of decime inclusæ
-flowing not from the King, but from Churchmen at a Time when they
might have granted the same, cannot be subjected to any such Burden. But
Tithes included, are in the common Case of other Tithes, if it can be proved,
that the Stock and Tithes were once distinct and separate. Therefore Tithes
transmitted by Infeudment under the Designation of decime inclusæ, have
not the Privilege of such, where distinct Reddends are paid for Stock and
Tithes 13 July 1688 L. Monimus contra L. Pitfoodels. Altho' a dif-
-ferent Duty happens frequently to be paid in Lands of the same holding.
Nor can the King himself grant Charters effectually with a Clause
-cum decimis inclusis Stair Lib. 2. Tit. 8. s. 10. Because a Dispensation
from the Prince doth not secure against the Payment of Tithes canone tiva
-25. c. dudum 31. X. de decimis. And to give the Privilege of decime in-
-clusæ were upon the Matter to make Lands Tith-free, seeing Tithes in-
-cluded could not be valued, nor subjected to any legal Burden more than
Lands. 3^o A third Kind of civil Tithes, are those that were once in the
-Person of the Heritor, and reserved by him when he feued his Lands
Act 24. Sept. 4. Par. 11. & 11.

Ecclesiastick Tithes are divided into Parsonage, and Vicarage Tithes.

Parsonage Tithes are the Tithes of Corn, belonging to the Parson cal-
-led decime majores, the great Tithes or decime rectorie or garbales vel
-herbales, Tithes sheaves. It is confessed, that Tithes of another Kind than Corn,
have been sometimes paid to Parsons, and to Bishops; but these were
paid to them as having the Title of Vicars consolidate in their Person,
and not qua Parsons. Whereas in some Places there never was any
Vicar