

Vicor in others there was, but the Parsonage and Vicarage are now swallowed up in one Titular. If it be objected, that since two Acts of Parliament were made for obliging each Man having a *Morough* of eight Acres, to sow at least a Firlot of Wheat, Half a Firlot of Pease and 40 Beans yearly under the Pain of 10 Shilling (Act. O. L. Par. 5. J. 1. Act. O. L. Par. 14. J. 2.) would seem, that Corn in those Days could not be considered as the Subject of the great Tithe, there being so little Sowing. It is answered, that these do not argue a Scarcity of Corn; but only of some particular Grains for not sowing whereof even at this Day some Country People have their own *particular* Reasons. The Characteristick of Parsonage Tithes is that it was introduced by positive Law, and is the same in all Places liable to Alteration or Extinction, by Prescription, or long Custom.

Vicarage Tithes, are the Tithes of annual Increase belonging to a Vicar, called *decime vicaria vel minuta*, Vicarage or small Tithes. The Subject of Vicarage ^{varies in} different Places. In Parishes, ^{according} as most of the Increase is Corn, the Vicarage is intirely or partly founded in Tithes. In those where the Pasture-ground is more considerable, Vicarage is the Tithes of the Product thereof. And as that differs in different Places, it affords a different Vicarage Tithes. In some Parishes no Vicarage is paid, as where most of the Land is laboured, and the proper Subject of Vicarage inconsiderable. In many Parts the Tithes of Eggs Fruit Lint and Hemp is paid. The Vicarage of Salt, and a personal Tithes Duty for every Loom in the Parish was sustained upon 40 Years Appeal on 29 Novemb. 1670 *Burnie contra E. Milsdale*. In some Parishes, and not in others the Tithes Fish is claimed as Vicarage. Yea in different Places of the same Parish, there is found a diversity of Vicarage. In some Places thereof the Tithes of Lamb and Wool is paid; in others the Hay and Cheese is the Vicarage and in no part of it any Vicarage of Corns 7 July 1677 *Parson of Prestonhough contra his Parishioners*. The distinguishing Mark of Vicarage Tithes is that it came in by no positive Law, but only by Custom, *Episcopi de Beneficiis auctor. tit. 10. Sect. 3. n. 6.* And by Prescription or Custom is altered or modified or taken off. The Reason has been, because Vicars, who now perpetual, were at first Temporary, during the Parson's Pleasure, and their precarious Stipends acquired with their Service, when the Parsons thought fit to remove them.

Sect. 2.

The different Rights of Tithes.

Rights of Tithes are either legal or conventional.

Legal Rights of Tithes are those belonging to parish Ministers, and to Patrons, which are treated of in the proper Places.

Conventional

Conventional Rights of Tithes are either heritable and absolute, or temporary. Since the Reformation and the royal Decrees arbitral, absolute Rights to Tithes pass in the same Manner as the Stock by Infeoffment. And Tithes, altho possessed by Rights distinct from those of Lands, are alienated either expressly, or tacitly by Presumptions and Inferences. Tithes are tacitly alienated under a Wife's Provision to the *Terre*, and *Hereditages* 13 Feb. 1628 *Lady Dumfermling contra the Earl her Son*. Tithes were found carried by a Disposition of Lands not mentioning the Tithes, because it contained an Assignment to the Tenant's Sacks, which were a joint Duty for Stock and Tithes, and an Obligation to pay the Minister's Stipend out of the Tithes. 27 Feb. 1672 *Scott contra Muirhead*. A Buyer or Compriser from one having Right to Lands cum decimis inclusis will have Right to the Tithes, tho not expressly mentioned in the Disposition or Apprising. But where Lands and the Tithes thereof are possessed by one diver to pure, his Disposition of the Lands would not convey the Tithes; because Tithes are not, like a Service or Annuitant, or other Burden upon Lands, extinguished by confusions or consolidations, by the Feudors acquiring Right to them. The Entry of Heirs to persons who died infeft in Tithes, is excepted by Precepts of clare combat, or by Service upon Brieves out of the Chancery. And tho these Brieves bear only a Warrant to inquire *de quibus annis redditibus* the Predecessor died vested; yet an Heir by Virtue thereof may be specially served in Tithes, for the Terms of the Brief are not to be so strictly and captiously observed *Stewart's Answers to Dirlet*. Doubts Tit. Tithes. But when Tithes are in nonentry, since they were never retained, the nonentry Duty should be the Feud Duty where the Holding is Feud, and a fifth of the Return of the Property if it be blench.

Temporary Rights of Tithes are constitute by Tacks. Which are either conventional or judicial.

Conventional Tacks are those granted by the Beneficed Persons themselves or other Titulars of Tithes. As Prelates whithen monastick or ecclesiastick were unable before the Reformation to fin out their Tithes; so neither could they grant long Tacks, for these were accounted Alienations *Balfour Pratt Craig Feud. Lib. 2. Tit. 10. §. 1.* And to the granting of short Tacks, the Consent of the Plurality of the Members of the Chapter behoved to be adhibited, excepting such of them as were Minors not past 14 years of Age, or out of Scotland 17 March 1622 *L. Drumlanrig contra Maxwell of Kils. 26 March 1629 College of Aberdeen contra Merzies. Craig Feud. Lib. 1. Tit. 13. §. 10.* But it was sufficient to the Validity of a Prelate's Deed, that Persons as Members of the Chapter or Convent subscribed to it; without Necessity either to instruct their Admissions, or to show by the Erection Charter, that the Subscribers were at least the Majority, that being presumed, unless the contrary were proved 24 June 1628 *L. Drumlanrig contra Maxwell*. And the Subscription of one of the Chapter as Witness to a Tack set by the Bishop, was held as sufficient as if he had expres-