

their Tithes, even to a longer Time than the Titular himself could set by Law Act 4. Par. 22. J. 6. For they were not stinted to any Time in granting such Prorogations: nor did their Decree of Prorogation require either Summons or Execution for its Warrant.

Ministers Stipends and Augmentations are a legal Burden, and the main one, to which Tithes are liable, against which no Right or Title whatever can secure. And the Truth is till once the parish Minister is sufficiently provided, no Person can safely buy his own Tithes, which are always subject to be evicted for that End.

Sect. 3.

How the Rights of Tithes are made effectual by Payment.

In handling the Payment of Tithes I shall first speak to the Subject titheable. 2^o The Manner of Payment. 3^o The Persons to whom Tithes are payable. 4^o Those by whom Tithes are to be paid.

1.

The Subject titheable.

The Clergy not contenting themselves with predial Tithes, personal Tithes came to be exacted, and about the twelfth Century Tithes were claimed for Hunting, Honey, Trade: and if Spankiem (Copen. Theol. part. i. Observ. in cap. 27. Levit. in fin.) may be credited, the very Alms of the poor were subjected to Tithing. The Doctors are never more confused and indistinct, than in what they write concerning the Subject titheable, especially in determining what things come under the Denomination of small Tithes.

A provincial Council (Stat. 35.) held in Scotland 1225 under pope Honorius the third ordained Tithes to be paid of all things quæ innovantur, as Corn Hay Lint Gardens Mills Fishings Hunting the Breed of Animals Wool Milk Cheese Chickens Eggs Trade sylvæ cædua or Woods used to be cut, Fruits of Trees and the like. But now with us personal Tithes take no place. And the Payment of predial Tithes is much regulated and determined by local Custom. For Hay Lint Hemp Flax Swine Egges and Fruit are some where titheable, and in other places not. In some places again and not in others the Tithes Fish is claimed. No Tithe ought to be paid for Fishes taken in alto maris (Espey de benef. ecclesiast. T. II. Sect. 4. n. 2.) the Sea being among those Things that are common to all §. i. Inst. de rer. divis. But then Tithe of these is exacted by the Heretor upon whose ground the Boats land by Virtue of their Landing. Generally Corn Stricks Lambs and Wool are every where tithed June 1666 Minister of ^{contra Lord Elphinstoun Saiv. Lib. 2. Tit. 9. 6.} Garden Fruits as Nail Herbs and Roots are tithed no where in Scotland

Scotland that I know; and were found not titheable 9 June 1676 Burnet contra Gib. Vicarage is ordinarily paid for Cows and Sheep, but not for Horses or Mares or any barren Cattle, except out of their grass-meal. But in a Word it is altogether local; being introduced by no positive Law, but only by Custom. Therefore he who pursues for Vicarage of any Kind, must prove former Use of Payment 30 June 1660 Minister of Elgine contra his Parishioners. By the civil Law, where a Custom is doubtful and uncertain, the Matter should be ruled by the Custom of neighbouring Places l. 34. ff. de reg. jur. But what is paid for Vicarage in one Parish, ought not to be a Rule to those in the neighbouring Parishes, since there is sometimes a different Tithe paid in different Places of the same Parish. So Use of receiving Payment for the Space of 40 Years of Vicarage out of a certain particular Product or Kind of Fruits from some Parishioners, was not sustained as a Title for the like Duty from others in the same Parish, who had never been in Use of paying the same ^{Duty} for their Lands 29 Novemb. 1676 Sheill contra Parishioners of Prestonhallgh. yea, in my Opinion Possession of the Tithes of any Species out of some Lands in a Parish would not infer an Obligation for the like Tithe Duty out of other Lands therein belonging to the same Heretor.

Tithes are due out of the Fruits of novaria (Caus. de decim. cap. ii. n. 2. Espey de Jid. Tit. 10. Sect. 1. n. 9. Bruner. de jure eccl. lib. 2. cap. 6. n. 9. But not by a Prescription of a Right to the Tithes of laboured ground Jid. Change of Grain, or the inverting the Use of ground, doth sometimes alter the Tithe, and sometimes extinguish it: vide infra pag.

2.

What is to be paid in Name of Tithes, & the Manner of Payment

For understanding what is to be paid in Name of Tithes, we must distinguish the drawn, from valued Tithe, and Vicarage from Parsonage.

The Quota of drawn Tithe hath varied in different Places. In some it is a Thirtieth Part of the Annual Increase, and in others the Twentieth. Some People make it a Twelfth, others the Eighth Part (Rebuff. de decim. L. 4. Corp. jur. consist. Lib. 1. Tit. 8. Def. 125. n. 13. In France two Tithes that is both a Ninth and Tenth is payable by the Laick Possessors of ecclesiastical Benefices Thomassin part 3. Livr. 3. Ch. 2. n. 3. But generally, the Tithe is considered as a Tenth Part adjusted thus: the whole Increase being divided in ten parts one Tenth is set aside for the Tithe three Tenth parts for the Seed and Livestock three Tenth parts for Bread; and three Tenth parts for the Rent. 'Tis a general Rule in Payment of all kind of Tithe, that neither the best nor the worst of the Fruits should be given for it. Vicarage Tithes are altogether regulated by Custom