

1945.

green fish.

The method of proof here is something singular and now much altered from what it was. Formerly in many cases one of the parties was allowed the prerogative of probation that is, was preferred to the leading of proof, which they think continued for. The Titular or tenant managed to get it upon the justifying possession for seven years of fifteen before the year 1628, or immemorial possession of drawing the Gilt or twenty years possession of drawing Rental Bolls of a certain quantity and quality. Mr. Lenzow offers on act 19 Parl. 1<sup>st</sup> in which case the heritor could not lead any proof of the Stock except for Certifications that is, where a det. was assigned to the Titular having the prerogative, for proving the drawn titl, the heritor was ordinarily allowed to take the same day to prove the stock with Certifications, that if the Titular did succumb in his proof the heritors proof of the stock should be received. Which upon the Event of the Titulars failing to be proved according to done, and the fourth part Declared to be the Tithy where of he got down a fifth as the Kings ~~and~~ <sup>and</sup> the Titular was Excluded from all manner of after proof. But now in all cases a joint proof is allowed to the heritor and Titular Act 30 Sept. 2 Parl. 4<sup>th</sup> 8<sup>th</sup> M. The heritor may as for the worth of the Giltes to the Titulars Pathy and the Titular may prove the Tithy Value by the heritors Pathy. But the stock and tith great and small be jointly Valued by the heritors oath required by the Titulars. Yet if the Vicarage pertain to the Minister, he may prove the value of it other ways if he pleads; and the quantity so proved will be Deducted off the fifth part Contained in the Depondant's Oath 27 July 1634. All joint proof of Stock and tith not bearing the present, as well as the Constant Rent in time coming is Null 9 January 1631. Witnessed in a process of Valuation ought to Dis King's tith betwixt for fields and out fields Acres 24 July 1667. Churn law contra E. Rivers.

An Heritor or life-rentor by Infeoffment, during the Depondant of a process at his instance for Valuing his tithes, may get the leading of them, if he apply for it by a Bill to the Commission; upon finding Caution to pay in the Event, Conform to the Valuation to be made Act 24 Feb. 4 Parl. 4<sup>th</sup> 8<sup>th</sup> M. Year, an heritor not Infeoff may

1946.

may claim the benefit to lead his own tithes, if he find a sufficient title for Infeoffment, and shew that he is not in Mora to complete his right 6 July 1642. About the same Act 17 Parl. 1633 shews, these to have the leading and drawing of their own tithes the same being first Valued, which clause would seem to suspend the leading till the Close of the Valuations. This privilege of leading during the Dependance was allowed to one who paid formerly Rental Bolls, and whose tithes had never been drawn 3 July 1643. Heritors who upon the Dependance of a Valuation and sale of their tithes before the Commission had obtained a warrant to draw them and found Caution to make the Valued duty forthcoming at the Event of the process; was found liable simply according to use of pay ment till the finding Caution; and as to Years subsequent to the Caution liable so with this quality, that the 20th Master before Extracting find Caution to them to be found or allow in the first End of the Valued duty to be Decreed by the Commission, what more they pay than that Ex bond to 27 Feb. 1706 E. Roxburgh contra Heritors of Lilliesleaf. Because the heritors must not seize both the Gilt and the Gilt duty, without Acknowledging the Titular who pays publick burdens for the Giltes, of which after a Valuation on and sale they are bound to receive him; and since the Titular cannot get a suspension of Costs for the heritors having a warrant to draw their own tithes; why should they have a suspension of the Gilt duty, out of the Costs is to be paid? But such a warrant for leading their own tithes, made by the Depondant leading a protestation for the purpose not resisting, in the process of Valuation Act 24 Feb. 4 Parl. 4<sup>th</sup> 8<sup>th</sup> M.

It is an Ordinary thing for obviating grounds of Depo, that all parties Concerned do agree to a Valuation of Content; and then offer the same to be Ratified by the Commission.

The Titular of Giltes may after a Valuation claim a Real security by Infeoffment for the Valued duty, Act of Commission 6 Aug. 1630 junct. Act 17 Parl. 1633. N. Rivers Just. Ob. 2 Jul. 10 516. But this I never knew.