

against any that debarred him 20 Decemb. 1622 Preston contra Minister of  
An Heritor was found liable for the Tithe Dutys of his Lands, to the  
Titular's Tacksmen, the Years that he possessed as Heritor, albeit he was not proved  
to have been in the natural possession, or to have received a joint Duty for Stock  
and Tithe: in Respect it was presumed, that he intromitted with the whole Rent im-  
prehending both Stock and Tithe; seeing it was not alleged, that any other Person ap-  
peared the Tithe in July 1713 Crawford contra Kennedy.

Tenants who pay a joint Duty to their Master for Stock and Tithe, are not  
liable to any Titular of Tithes, in so far as they have paid bona fide to their Master,  
but in that case must answer as Intromitter for the Tithes 10. March 1627 Ingles  
contra Kirkwood's Lair Lib. 2. Tit. 2. s. 1. It was judged sufficient to absolve Tenants  
that they had paid, the after Citation, a common Duty for Stock and Tithe without  
Distinction, as they had formerly done for several Years 21 March 1620 Murray  
contra Intromitters with Tithes. The Payment of a joint Duty, for one Year, by  
Tenants to their Master, as they had been in Use to do before, to his Author their for-  
mer Master, even after Intimation particularly executed against themselves, was  
found to have been made bona fide 13 Decemb. 1627 Hepburn contra Tenants of  
Lairnflat. The Reason is obvious, because Tenants who are liable to an undistinct  
joint Duty for Stock and Tithe, cannot know how to divide it proportionably, and what  
they should reserve in their own Names for the Tithe. Which Privilege of Tenants  
paying a joint Duty to their Master for Stock and Tithe, both only secure and defend  
them against Titulars: for they are liable as others to the Minister for his Tithes  
when payable out of the Tithe. Thus one who had taken from an Heritor for a  
certain Silver Duty a Tack of the great of some Land whereof the great and  
small Tithes were by the Commission of Plantation 1618 made liable to the Mi-  
nister for a certain Proportion of his Tithes, was found obliged to pay to him  
that Proportion, the Minister proving, that the Tacksmen possessed the Land the  
Year controverted and that the small Tithes of the Sheep pastured <sup>and intromitted with</sup> thereon, by him  
did extend to so much, as all the Tacksmen had paid his Duty to the Heritor, who  
had Right to these Tithes before the Minister's ~~Tithes for his Lands~~ Claim,  
but the Tacksmen had his Relief against the Heritor 19 Feb. 1629 Kirk. contra  
Gilechrist. If the Tithe be valued apart from the Stock, the Tenants are liable, and  
not the Master unless he intromet therewith Stair Jrd. at Lib. 2. Tit. 8. s. 30.

Merchants purchasing before the Tithe is drawn a whole Crop for a just  
Price or enormous Cause, will find themselves liable for the Tithe M. Henric Inst.  
Lib. 2. Tit. 10. s. 18. If the Crop was upon the Ground at the Time, either in the  
or in the Aves or in Fuchs: also they pay the Price before any Diligence is used  
against them at the Instance of the Tithe Master 24 June 1662 Vornal contra Al-  
lan. Because every one is obliged to know, that regularly there is a Tithed  
out of the Produce of Lands. Mean Time I think that one who buys so many  
Bolls of Victual, especially in publick Market, or out of the Barrayard, the Tithes  
were the whole Growth of that Year, would have some plausible Pretence  
to

to plead Exemption from Payment of a Tithe: because he was not bound to  
know but the Tithe was drawn, and I take this to be my Lord Stair's Mean-  
ing when (Lib. 4. Tit. 29. s. 1.) he says that Merchants buying for a Price will  
not be liable for the Tithe. Seeing the Payment of Tithe Fish varies much  
according to the different Customs of Places: immemorial Custom of Payment  
by the Buyers and Intromitters with Fishes taken and slain within the Shires  
of Scotland, was sustained relevant to make them liable 15 Feb. 1631 Bryce Tem-  
ple & Schaw contra Brown. The like Custom of Merchants being in the past  
Memory of Man, & subsist for the Tithe of Fish bought fresh in Post-falls, at  
the first Hand from Fishers in the Shires where they were taken, was found suf-  
ficient to make them answer as Intromitters 13 Decemb. 1669 Bishop of Isles  
contra Hamilton. Which would insinuate, that those were free who bought not in  
upon the Place, where the Fishes were taken, or did not buy them fresh, but at the  
second Hand after they had been salted by others.

The Pope by the Canon Law, is not bound to pay Tithes, unless of real Rent  
belonging to him before his Advancement to the papal Chair. A. monet. breviar.  
cunt. aut. de decim. p. 196. 197. And he assumes a dispensing Power as to the  
Payment by others, which hath been often exercised in Favour of Monks, for  
procuring and securing their immediate Dependence upon the See of Rome. This  
Privilege of Exemption from Payment of Tithes, was restricted by Pope Griz-  
on 4. to the Cistercians, Hospitalers and Templars; whose Decree is not extant,  
but confirmed by Alexander 3 in the Year 1170 c. ex parte tua 10 & c. segg. X  
de decim. The Immunity in Favour of the Cistercians Hospitalers & Templars,  
was so qualified and explain'd by Innocent 3 in the general Council of Lateran  
1215 that it should not be extended to acquirenda, but only to such Possessions  
as they had before that general Council, c. pen. X. de decimis. And they must  
prove that former Right, who plead upon it: nam que se fundat in tempore, hoc  
probare debet Rebuff. Id. 14. n. 42. But Proof of immemorial Possession suffi-  
ceth Covaruv. bar. resol. Lib. 1. cap. 17. n. 5. Exemption from Tithing was per-  
sonal to these three Orders, and not communicable to Tenants and Feuars, c.  
Cicut. ii. X. de decim. Rebuff. Id. n. 48. Canis. de decim. cap. 6. n. 10 & 11. Yea  
it belongs only to the Religious themselves, when they labour their own Lands:  
others c. delecti 8. X. de decim. Canis. Id. n. 12. The Privilege was once  
extended here to Lords of Erection, Feuars and other singular Successors.  
And Lands laboured by an Heritor himself, were found Tithed fees in Pres-  
wore of the Cistercian Order 15 July 1664 Crawford contra L. Prestongrange.  
But his Thought that Decision has not been well digested, for such personal  
Privilege should not descend to Lords of Erection, and Temple Lands with us  
enjoy no Exemption from Tithing, M. Henric Observ. on Act 29. Part. ii. s. 6.  
Ministers