

to be disposed till the Patron obtain a just Stipend legally settled upon him Act 23. Sep. 2. junct Act 25. Sep. 4. Par. W. & M. The Reason why these Fishes are to be sold at Six Years Purchase; whereas the ordinary Price of heretable Fishes is nine Years Purchase Act 17. Par. i. Ch. i. is, because Patrons came easily by the former, therefore should the more easily part with them. Albeit Patrons be now restored to the Right of Presentation to Churches 10. A. cap. 12. the Right of Fishes of Benefices not heretably disposed remains with them. So that the old Brocard decima debentur patrono, is in a Manner inverted to the Tune of decima debentur patrono. And the old principal Right to Fishes, is resolved into a naked Power of retaining, or disposition, till the Minister get a legal Stipend settled upon him.

Heretors formerly used to be excluded from acquiring their Fishes, if they embraced not the Benefit within two or three Years Act 17. Par. 1633. Act. 61. Sep. 1. Act 28. Sep. 3. Par. 1. Act 15. Sep. 3. Par. 2. Ch. 2. Act 28. Sep. 1. Par. 9. But now Heretors are under no Restriction of Time in buying of their Fishes Act 30. Sep. 2. Par. W. & M. Where Lands are alienated the Heretor purchasing his Fishes must give the Alienor the leading and drawing for Payment of the Value Duty Act 17. & 19. Par. 1633.

Tho' all Fishes indiscriminately may be valued d. Act 30. yet some are of the Nature, that they cannot be bought. Wherein our present Constitution doth vary a little from former Practice. The common Privilege, allowed to Heretors of buying their own Fishes, was once not competent for any Fishes possessed by ecclesiastical Titulars the Time of the Surrender, unless when under Task in the Hands of others d. Act 17. But now the Regulation is, that no Fishes can be bought that ~~they~~ are either possessed by Ministers for their Stipends d. Act 30. or belong to the King by the abolishing of Prelacy, so long as they remain undisposed; or that are appropriated to Colleges Hospitals or other pious Uses; or that once pertained to the Heretor, who disposed the Lands without, or reserving the Fishes Act 23. Sep. 4. Par. W. & M. The Reason of this last Exception is plain: for an Heretor, who having Stock and Fish in his own Person, found only the Lands should no more be obliged to sell his Fishes, than a Superior his Feudutys, or an Heretor any Right of Property reserved by him when he sold his Lands. It was once much controverted, if the Fifth of Fishes taken in alto mari, might be valued and bought at the Instance of the Heretor of the ground and Harbour where the Boats land. It was alleged for the negative that the Law provides only for Valuation of the Fishes of Lands, and the Fifth of Fishes could not be called Fishes of the Lands where they are unloaded. Seeing the Stock which answers to the Fifth is not at all predial, or maintained by the Strength of the Heretor's Ground: nor yet is it the Product of his Tenants Industry; and this Fifth being at

acted of all Strangers could not be called the Heretor's Fifth. Besides it is so casual and uncertain, that no certain Value can be set upon it. 2<sup>o</sup> He only who hath Interest in the Stock hath Right to pursue a Valuation of the Fishes, to get them consolidated: and the Heretor of the Harbour hath no Right to the Stock of Fishes imported, more than to the Property of a Loading of East-India Ware but only to the Dues of Anchorage or petty-Custom for maintaining the Harbour. The Persons who take the Fishes are Proprietors thereof and cannot be hindered to fish in the main Sea which is juris publici without Oppression: and therefore leave the sole Interest to value the Fishes of their own Fish. But yet it was found, that these Fishes might be valued and bought 22 July 1702. Hall of Dingley contra Moorator of the Presbytery of Dunbar, Lord Alexander Kay &c. For the Reasons following so by the Acts of Parliament all Fishes whatsoever Portage and Viarage may be valued, and these in Question are not of the Number of such as are not saleable. The Fifth of Land is mentioned only exempli gratia as that which most commonly happens to be valued and sold. And yet even if this drawn upon ones Land, may be termed the Fifth of his Land, tho' no part of the natural Product thereof, as is clear from the Instance of Sheep put upon Ground immediately before Whitsunday, whereof the Viarage may be exacted at that Term. Fifth Fish is not valued as taken in alto mari, more than the Custom of goods is due while the Ship is out at Sea. But as Custom of these is due upon landing of the Ship: so Fifth Fish is exacted, when the Boats come to Shore by Virtue of their landing; and therefore the Heretor hath Interest to value the same, as well as the Viarage Fishes of any other goods upon his Ground. But this is not simply upon the Account that he furnished the Boats with a Harbour. For as the Fishes become due, in so moment that the Boats land upon any part of his Ground, albeit there were no Harbour: so the Heretor hath Right to seek the same valued. Custom and Fifth are different Casualties consisting together, so as the Heretor may both value the Fifth and exact the Custom. Nor are any other imported goods save Fish, liable to a Fifth. 2<sup>o</sup> That which may be set in Task for a certain Duty may be valued and bought: and it is the ordinary Custom throughout the Coast-side for every Boat to pay some two some four some six pound, some less some more yearly for the Fifth Fish commonly but annis one Year with another. 3<sup>o</sup> Albeit the Heretor of the ground where the Boats Land had no Right to the Stock of the Fish, he may value the Fifth: for he hath no Right to the Stock of his Tenants goods, and yet hath a good Interest to pursue a Valuation of the viarage Fifth thereof, which is drawn in ipsis corporibus upon his Land. Nor did our Lawgivers by introducing a Valuation Sale intend so much a Consolidation of Stock and Fifth, as to prevent the convenience of