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A
T R E A T I S E
O N
A G I S T M E N T T I T H E,
I N W H I C H
The N A T U R E, R I G H T, O B J E C T S,
M O D E o f P A Y M E N T,
A N D
M E T H O D o f a s c e r t a i n i n g t h e V A L U E
o f E a c h S P E C I E S o f i t,
A r e f u l l y S t a t e d a n d E x p l a i n e d.
A s f e t t l e d i n P u r f u a n c e o f a D E C R E E
O f t h e C o u r t o f E X C H E Q U E R,
M a d e i n E A S T E R T E R M M, D C C, L X X I V.

By T H O: B A T E M A N, A. M.
Chaplain to his Grace the Duke of G O R D O N,
Vicar of W H A P L O D E, L I N C O L N S H I R E, & c.

The S E C O N D E D I T I O N,
With large A D D I T I O N S a n d I M P R O V E M E N T S.

L O N D O N:
Printed, and sold by R I C H A R D S O N a n d U R Q U H A R T, i n P a t e r -
n o t t e r - R o w; T. C A D E L L i n t h e S t r a n d; a n d W. T E S S E Y
M A N i n t h e M i n s t e r - Y a r d, Y O R K. 1778.

[PRICE THREE SHILLINGS.]

TO THE
 Most Rev. Father in God
W I L L I A M,
 By Divine Providence,
Lord Archbishop of YORK,
 PRIMATE and METROPOLITAN of
 ENGLAND,
 Lord High Almoner, and one of his Majesty's
 Most Honourable Privy Council.

MAY IT PLEASE YOUR GRACE,

THE following Treatise, which
 I beg leave most humbly to
 present to your Grace, has already
 been honoured with a very favour-
 able Reception from the public in
 general.

It has likewise received the parti-
 cular Approbation of several Per-
 sons, not more distinguished for their
 a High

vi DEDICATION.

High Rank in the Church, than for their eminent Writings in Defence of its Rights;—and whose favourable Sentiments therefore, as they have often been acknowledged as sufficient Recommendations of much more important Publications, I flatter myself I may be allowed to consider as so many Testimonies of some little Merit in my own.

I should not, however, have thus mentioned either of these Circumstances respecting the following Treatise,—which might, perhaps, carry the Appearance of Vanity,—had I not meant to avail myself of them, as the best Apology for presuming to dedicate it to your Grace. For however ambitious I might, from the first, have been of aspiring
to

DEDICATION. vii

to such an Honour, I deferred indulging myself in that Presumption, till it had received those Testimonies in its favour;—chusing rather to hazard its Fate, than to make use of your Grace's Patronage as a Protection to a Performance, which had nothing else to recommend it to the Public.

But, exclusive of these Considerations,—the Motives which occasioned its first Publication,—whatever might have been your own, or the Sentiments of others respecting the Execution of it,—would alone, I am perfectly persuaded, have been honoured with your Grace's Approbation:—For the sole design of publishing the following Treatise, My Lord, was to obviate
a 2 the

viii DEDICATION.

the many and great Evils, and the unhappy consequences of them, in which our Brethren in General,—but more particularly the inferior Clergy, are frequently involved, from being obliged to litigate their Rights to the Revenues of their Livings. Such Litigations are very seldom carried on with that Spirit of Friendship, and those benevolent Sentiments towards each other, which as they always ought,—it is ever greatly to be wished, always did subsist betwixt every Shepherd and his Flock.—For whilst the latter entertain any Dispositions of personal Enmity to their Minister, they are too apt to be led into a disregard at least,—if not an Aversion, to his Ministry. To prevent the latter, by obviating the too common

Cause

DEDICATION. ix

Cause of the former,—so far as relates to the particular Subject of this Treatise—hitherto considered, not only as the most difficult in itself,—but the least understood, and from whence, therefore, the most Disputes are liable to arise, respecting Tithes,—was the only End I had in View from its Publication. And I am happy in having great reason to flatter myself, that my Labour, in so laudable a Design, has not been altogether unsuccessful. It has, in several Instances, I know, already been as serviceable as it was intended;—and I therefore wish and hope it may be equally so in many more hereafter.

But whilst I beg your Grace's Acceptance of so humble an Offering,

x DEDICATION.

I cannot withstand the Temptation, which this opportunity gives me, of expressing the high Regard and Reverence which I have for many years born to your Grace's most exalted—but what is much more to your Honour,—to your most amiable Character. The Veneration, with which your Grace's distinguished Merit and Abilities have ever been beheld, has only been equalled by that of the Man who is possessed of them—and the only difference in Opinion of mankind, respecting your Grace, has ever been, whether you were born more to perform Great Actions,—or by Nature ever disposed to Good Ones. The Power and the Will to each of these, all acknowledge, were never more happily or more illustriously united, than

DEDICATION. xi

than in the present Primate of England—a Station, which, however exalted in itself, rather receives than confers Dignity and Honour from Your Grace's filling it.

I cannot, however, arrogate either any peculiar Discernment from my high Admiration of the Greatness,—or singular Merit from my strong Attachment to the Goodness of your Grace's Character,—farther than finding my own corresponding with the general Sentiments and Affections of all Ranks and Orders of men: Your Grace being happy in having all both think and speak alike of you,—and your Grace is now only arrived at that Dignity where the wishes of all went before you, and

xii DEDICATION.

and of none more than those of the Clergy of the Diocese of York.

I can, in this respect, speak with the greater Confidence, having, at several of Your Grace's Primary Visitations, found Your Clergy every where unanimous in their Admiration of all your Great, and in their Praises of all your Good, Qualities.

From that exalted Station therefore,—to which you have been raised, more by the Desires of your Diocese than your own, you will derive the peculiar Felicity of receiving the highest Esteem, and the warmest Affection from all those over whom you preside;—which that you may long—very long live to enjoy

DEDICATION. xiii

joy in the purest and most perfect manner, is the sincere Wish and fervent Prayer, of none more than,

May it please Your Grace,

Your Grace's

Most Devoted and

Most Obedient

Humble Servant,

WHAPLODE,
Decr. 1st,
1778.

THO. BATEMAN.

P R E F A C E.

THOUGH the very favourable Reception, which a large Impression of the following Treatise has already met with from the Public;—and the rapidity with which the whole has some time ago been sold off, might, perhaps, be deemed a sufficient Apology for the Author in publishing a second Edition;—yet to those who have not seen the Preface to the First, it may seem so very extraordinary and almost singular, That a Clergyman—and a young one too—should presume to publish a Treatise, not only on a mere matter of Law, but on a question the most difficult and extensive that occurs on the whole Subject of Tithes;—and in which the Principles and Doctrines laid down, are directly contrary to those delivered in all the old Law-Books,—as to require, at least, an Explanation.

xvi P R E F A C E.

With this view, The Author begs leave to inform his Readers, that the first Edition of the following Treatise was hastily drawn up some years ago, neither from any Ambition of commencing Author, nor from an Affectation of any superior Degree of Knowledge upon the Subject; But from the Motives, and with the benevolent Intentions, which he here thinks it requisite to mention, as his best—his only Justification for so unusual an undertaking.

About seven years ago he filed a Bill in the Court of Exchequer.

1st,

For the Tithe of the Agistment of All Sheep, from the Time of their last Shearing, till they were slaughtered, sold, or removed out of his Parish, in each year.

2dly,

For the Tithe of the Agistment of All Barren and Unprofitable Cattle.

N. B.

P R E F A C E. xvii

N. B. Neither of which Tithes had ever before been either paid or demanded.

3dly,

For all the Tithes of certain Lands in his Parish, which had never before paid any Tithes at all—but had always been held as Tithe-Free, under the Plea of their having formerly belonged to one of the greater Abbies, dissolved by the Stat. of the xxxi. of Henry VIII,

In about three years after the filing of his Bill, the Author gained an Unanimous Decree in his Favour, upon every one of the above-mentioned objects of it:—And though—through the Chicanery,—not of the Law itself, but of certain Professors and Practisers of it, he was afterwards obliged,—before he could carry such Decree into Execution, and consequently reap any advantage from it,—to fight his way through all the Obstructions and Embarrassments of Cross Bills and Commissions almost without end; yet, upon every subsequent

xviii P R E F A C E.

subsequent Hearing and Application to the Court, every Matter in Dispute was as unanimously determined in his Favour; and all his Claims, at last, fully established, and all Litigations finally settled; not more perfectly to the satisfaction of himself than that of all his Parishioners.

All these Decrees, Decisions, &c. &c. in his Favour, occasioned the Author's receiving a great many Letters from almost all parts of the Kingdom, relative to the Objects of his Claims, and the particular Proceedings in support of them. The following Treatise was originally drawn up, along time before it was published, as a kind of general answer to them all;—And had any thing, in the mean time, been published at all satisfactory; or had the Author heard of any other Person being engaged upon the same subject, whose work was likely so far to prove so, as to anticipate the usefulness of the Information contained in his own, it should never have been published at all.

Agistment

P R E F A C E. xix

Agistment Tithe has, of late years, become a matter of great Attention and Enquiry; and very little Information is to be gained from the old Law-Books upon the Subject;—still less which can be of use to those concerned either in the Receipt or Payment of it: The Court of Exchequer having within these few Years made several Decrees for Agistment Tithe, in all those Cases and under all those Circumstances, in which in the Old Law-Books it is particularly and expressly denied to be due; and in which, both the most eminent Counsel now at the Bar, and the Barons themselves, have not scrupled to declare, that the Positions there laid down, respecting the Right to this Tithe and the Mode of Paying it, are founded upon erroneous Principles, and have no legal Ones to support them.

Nor ought this to be matter of much Surprize, when it is considered how little occasion there has been, till of late Years, to pay much attention to this subject, and of consequence that it must have been

xx P R E F A C E.

been little understood. But the Case is now very different;—the many Bills filed, within these few Years, in the Court of Exchequer, have occasioned the matter of Agistment Tithe to be thoroughly investigated—the Right to it clearly and perfectly explained, and fixed upon general and incontrovertible Principles; and the Mode of Payment precisely ascertained.

The Law at present laid down by that Court, upon each of these Subjects, the Author hopes, is not more fully than fairly stated in the following Treatise. With respect to the latter, He can assure his Readers—which is the most material for them to know—That he has laid down no Rule,—advanced no Principle,—delivered no Doctrine, for which he has not, in his own Case, a proper Voucher in his hand from the Court of Exchequer; Or to which that Court has not given the fullest sanction of its Authority:—Nor any Thing but what he has himself actually done in consequence of its Decrees, Decisions,

P R E F A C E. xxi

Decisions,—Commissions, or Orders in his Favour.

Many, if not all, of these, it must be acknowledged, are directly contrary to those to be found, and the Cases referred to, in the old Law-Books: And as the latter still remain uncanceled;—and none of the Modern Doctrines or late Determinations in consequence of them, are at all mentioned; It was presumed it might be doing an acceptable Piece of Service to all interested in the Subject—after thus confronting them with each other—to leave the public to determine upon the Degree of Authority due to each, viz. To the Decrees and Decisions made, perhaps, Four-score,—Or to those made only Four Years ago relating to it.

For, besides the Motives before-mentioned for this Publication, the Author had reason to flatter himself, That as in all other Cases—so undoubtedly in this—the latest Decisions will ever be held as the best Precedents and the strongest Authority,—it might opportunely prevent many disagreeable,

xxii P R E F A C E.

disagreeable, as well as expensive Litigations,—which for want of such Information,—have so often already, and might as often hereafter arise upon the Subject.

How far the following Treatise will be found capable of answering, in any Degree, these Benevolent Purposes, the Author of it humbly submits to the candid judgment of his Readers. He does not pretend to be a Lawyer ;—and it will be evident, he does not write like One. He rests his only Merit more upon the goodness of his Intention, than the Execution of it: As he may conscientiously affirm, that his sole view was to communicate to his Readers, with all the Plainness and Perspicuity he was able, the Knowledge he had gained, after much Study and Attention,—at a very great Expence—and from the highest Authority, upon the Subject of Agitment Tithe.

He has availed himself, in this Edition, of all the Information, Assistance, and Advice, which he has been favoured with—and for which he here begs leave to return his

P R E F A C E. xxiii

his best Thanks—in consequence of a Paragraph for that Purpose in the Preface to the First. He has only to regret, that he has not received more or of greater Importance, of either. In either Case, the present Edition must have gone to the Press more perfect in Proportion. Such, however, as it now is, he humbly offers it to the public, under the most grateful sense of its former very favourable Reception.

At the same time he begs leave to repeat, That should any part of the following Treatise be thought not sufficiently explicit; but to require farther Explanation or to be more fully stated :

Or should the Author be thought capable of communicating any useful Information, upon any particular Cases which may occur to any of his Readers, he will pay the utmost Attention and Regard to every Application to him for that Purpose.

In January next will be published,

A
T R E A T I S E
O N

TITHE-FREE LANDS:

In which, all the Requisites to a legal Exemption
from the Payment of TITHES,

Are fully stated and explained

By THO. BATEMAN, A. M.

Chaplain to his Grace the Duke of GORDON,
Vicar of *Whaplode, Lincolnshire, &c. &c.*

Also speedily will be published,

By the same A U T H O R,

*The Necessity and Advantage of Religious
Principles in the Soldiery:*

A MILITARY SERMON,

Preached before Sir GEO. SAVILE's Regiment of
Yorkshire Militia, and a Company of the Royal Regi-
ment of Artillery, at FORNHAM CAMP, Aug. 2, 1778.

London printed, and sold by Richardson and Urquhart, in Pater-
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in the Minster-Yard, York.

A

T R E A T I S E

O N

AGISTMENT TITHE, &c.

C H A P. I.

*Agistment, what;—Tithe of, whence due;—
and what things are to pay it.*

AGISTMENT is the keeping or
depasturing of Sheep; and of any
kind of Cattle, whether Beasts or
Horses. And

The Tithe of Agistment is the tenth
part of the Value of the keeping or depas-
turing of such Sheep, Beasts, and Horses,
as are liable to pay it.

This Tithe, being the tenth part of the
Value of the produce of the Land, is due

A *communi*

(2)

communi jure, as indisputably as the Tithe of Corn or Hay is so due.—But it has this peculiar difficulty attending it, viz. That it cannot be taken in Kind. For as it is no otherwise cut or mown, than by the mouth of the animal, along with the other nine parts, and consumed at the same time, the person to whom it is due can only receive the value of it; the method of ascertaining which shall be explained hereafter.

A L L S H E E P

are liable to pay this Tithe, *from the time of their last Shearing, till the Time they are slaughtered, sold, or removed out of the Parish.* And likewise,

A L L B E A S T S and **H O R S E S**, not actually yielding Milk, nor employed in Husbandry. The former, being

H E I F E R S

from the time of their being weaned, till they calve: Or should they be sold or removed out of the Parish before they calve, then, *From the time of their being weaned, till the time*

(3)

time they are so sold or removed out of the Parish. Being

S T E E R S

From the time of their being weaned, till they are killed or sold out of the Parish, whether fat or lean; except during such time as they are actually worked at the Plough or in the Team.

Horses, whether Colts or Fillies, are likewise liable to pay an Agistment Tithe from the time of their being able to live without the Mare.

C O L T S

till they are sold or removed out of the Parish, or employed in the business of Husbandry;

F I L L I E S

till they are so employed, or bear Foals.

All such Sheep, Beasts, and Horses, (the two last of which are commonly comprehended under the general Denomination of *Barren and Unprofitable Cattle*) are to pay a

A 2 Tithe

(4)

Tithe for their Agistment during the time they have been so kept in any Parish, according to the value of the keeping of each per week.

The word Agisting, Jyfting, or Joifting, as it is differently pronounced in different parts of the kingdom, has generally been understood to relate solely to the Stock which a Farmer or Occupier of Land takes of another person, to keep for a certain time for hire, and not his own.

But Agistment includes the latter equally with the former; and all Occupiers of Land are liable to pay the Tithe of the Agistment of their own Sheep, and Barren and Unprofitable Cattle, in the same manner as for those of other people's kept for hire. For the Rector or Vicar, being entitled to the tenth part of the Produce of the land, that tenth part in all cases of Agistment can no otherwise be ascertained, than from the Value of the Keeping per week of the Animals which consume it.

CHAP.

(5)

C H A P. II.

Principles and Positions, respecting Agistment Tithe, laid down in the old Law Books, and Tithing Table, now exploded.

IT is said in several of the old Law Books, That "Agistment is the feeding of cattle upon pasture lands, which pay no other tithe." Burn's Eccles. Law, vol. iii. p. 419.

From which Definition it should seem, that no Agistment Tithe is due from such lands as have paid any other Tithe the same year. But this is an erroneous Notion, and founded upon a wrong Principle. Lands which have paid the full Tithe of Hay in kind, are afterwards, in the very same year, as liable to pay Tithe of Agistment, as if they had been depastured all the year round and paid no tithe of Hay, nor any Composition or Modus in lieu of it; and that for an indisputable reason, which shall hereafter be assigned.

It

It hath been asserted that Tithe of Agistment shall not be paid for

I. M O W N L A N D.

“ If a man pay tithes of hay, it is said, “ that no tithes ought to be paid *de jure* “ afterwards for the pasture of the same “ land for the same year; for he shall “ not pay tithes twice in the year for the “ same thing; for the after-pasture is “ only the relicks of the hay, of which “ he hath paid tithe before.” 2 Inst. 652, 1 Rolls Abr. 640.

“ Nor for Agistments in such after- “ grafs.” Rolls Abr. 640. Bunb. i. 7.

Also, “ No tithe is due for the cattle, “ either of a stranger or an occupier, “ which are depastured in grounds that “ have, in the same year, paid tithe of “ hay.” Bac. Abr. vol. v. p. 54.

Nor, II.

For P L O U G H E D L A N D.

“ No tithe is due for such cattle as are “ depastured upon land that has, in the “ same

“ same year, paid tithe of corn.” Bac. Abr. vol. v. p. 54.

And likewise, “ If a man pay tithes of “ corn, he shall not pay any tithes for the “ after-pasture of that land for that same “ year, nor for Agistment in such after- “ grafs.” 1 Rolls Abr. 641.

Nor, III. For S U M M E R - E A T E N L A N D.

“ If a man pay tithes in kind to the “ Parson for his lambs, fleeces, and other “ things going and arising upon his pas- “ tures, wastes, or other lands; it is said, “ that he shall not afterwards, in the same “ year, pay Tithes of Agistment for the “ same pastures, wastes, or other lands.” 1 Rolls Abr. 641.

The three cases here stated, from the Authorities quoted along with them, comprehend all the Modes of cultivation, to which an occupier can apply his land; and therefore, according to the doctrine here delivered, no Agistment Tithe can ever be due

due for any land however occupied. For if Agistment Tithe is due, *communi jure*, as all the Law Books assert, and from the very nature of it; it must be, but is not to be paid for lands, either

- I. MOWN,
- II. PLOUGHED, Or
- III. SUMMER-EATEN;

for what lands; it may be asked, shall it be paid? Or for what other lands, except Fallows, which yield no produce, can it be paid? Nor;

IV.

For AGISTMENT of SHEEP.

After quoting several cases in which Tithe for the Agistment of Sheep, from the time they were last shorn, till sold or removed out of the Parish before the next shearing, had been decreed by the Court of Exchequer, we find the following in the New Abridgment from Bunb. 313.

“ Poor

POOR }
 against }
 SEYMOUR. }
 HILL. 5 G. II. }

“ But in a still later Case, the Court of Exchequer were of a quite different opinion. A Bill was brought for the Tithe of depasturing Sheep four Months in the Parish after they had been shorn; it appeared also, that at the end of this Time they were removed into another Parish, and that they were shorn there at the next shearing Time: In this Case, the Cases of Coleman and Barker, and Dummer and Wingfield, were cited by the Plaintiff’s Counsel. But the Court held that *no Agistment Tithe should be paid, because Sheep are Animatia fructuosa.*”
 Bac. Abr. vol. v. p. 55.

And this is the last Case quoted upon the subject.

But none of the above Positions or Decisions are at this Day held to be legal, nor would be admitted to have the least weight in Westminster-Hall, as having neither Reason nor Justice to support them; but obviously militating with

B the

the Principles upon which all Right to Agistment Tithe is acknowledged to be due. For Agistment Tithe is due in all the above Cases, upon the Principles stated in the next Chapter.

It may, perhaps, not be improper here to take Notice of a Tithing-Table, printed upon one large Sheet of thick Paper, which many, both of the Clergy and Lay-Impro-priators have; and frequently refer to, and which is often advertised every year to be sold. The particular Doctrines respecting Agistment Tithe stated in that Table, are those laid down in the several old Law-Books above-mentioned, and any reference or appeal to it can only serve to misinform and mislead, and therefore rather occasion than prevent any Dispute upon the subject.

CHAP.

C H A P. III.

Two general Rules or Propositions respecting the right to Tithes,—and particularly of Agistment Tithe.

THE two following General Rules or Propositions respecting the Right to all kinds of Tithes, but more particularly to that of Agistment, after being fully argued, only a very few years ago, in the Court of Exchequer, by several of the most eminent Counsel then at the Bar, of whom the present Lord Chief Baron was one, in the Course of the Hearing of a Cause chiefly upon the matter of Agistment Tithe, and of as great Importance as ever came before that Court, were admitted and allowed as the Basis, not only of the Decree, which was given in that, but in several others of a similar kind, which have been given in the same Court since. All right to Tithes of any and of every kind, is derived from the Principles laid down in one or the other of the fol-

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lowing

(12)

lowing Rules ;—by the proper application of which, almost every Doubt and Difficulty may be resolved, and every Dispute, especially relating to Agistment Tithe, may easily be determined.

The two General Rules are these :

R U L E I.

The Tithing-man is entitled to the Tenth Part of the Produce of the Land, or the Value of it.

N. B. The Produce comprehends all Cases where the Tithe can be taken in kind, as in Hay, Corn, &c. The Value where it cannot, as in Agistment.

R U L E II.

So often as a new Increase arises, so often a new Tithe becomes due.

The second of these Rules is rather a consequence from the former, than an independent Proposition.

Let

(13)

Let now any or all of the four Positions above quoted from the Law-Books in the last Chapter, be applied to either of the above now-acknowledged and established Propositions, respecting Agistment Tithe, and it will evidently appear, that either of the two following Principles upon which they are founded are equally erroneous.

1st, That the same Lands shall not pay Tithe twice ; or for two things, in the same year.

2d, That the same Thing shall not pay Tithe twice in the same Year, as in the Case of Sheep paying a full Tithe of Wool, and afterwards of Agistment.

Both these Positions are now held equally erroneous. That they are so, the Author begs leave here to appeal to a Decree in the Court of Exchequer, in his own Case, so late as Easter-Term, 1774.

In

In the EXCHEQUER.

BATEMAN } This Bill was filed
 against } against six of the Prin-
 AISTRUP, &c. } cipal Owners and Occu-
 piers of Land in the Parish.—The Impro-
 priators of the great Tithes, and their Les-
 sees, were made Parties to the Bill; which
 was brought, amongst other Things, for
 the Tithe of the Agistment of Sheep,—and
 of—Barren and Unprofitable Cattle,—in
 the following Words, viz.

“ For the Tithe of the Agistment of
 “ All Sheep, from the time when the
 “ same were last sheared on the said
 “ Lands, until they were sold off Fat,
 “ or taken out of the said Parish for
 “ Sale or some other Purpose, before
 “ the next Shearing thereof.”

And likewise,

“ For the Tithe of the Agistment of
 “ All Barren and Unprofitable Cattle.”

It was proved in this Cause, and much
 stress seemed to be rested upon such Proof
 by

by the learned Counsel for the Defend-
ants.

I.

That the Sheep, for which the Tithe
 of Agistment was here claimed, from
 the time of their last Shearing, till the
 time they were sold or removed out of
 the Parish, Had, in the very same Year,
 paid to the Lessees of the Impropri-
 ators of the great Tithes, *the full Tithe
 of their Wool in kind.*

II.

That the greatest Part of the time
 from their being so shorn and paying
 the full Tithe of their Wool in kind,
 till they were slaughtered, sold, or re-
 moved out of the Parish, *They had
 been kept upon the Eddish or After-grass
 of Lands, which, in the same year, had
 been mown and paid Tithe in kind to the
 Plaintiff in this Bill.*

III.

(16)

III.

Or upon Turnips or Cole, which were after Crops, from Lands, which had in the same year yielded a full Tithe in kind.

The very same Arguments were urged with respect to Barren and Unprofitable Cattle,—viz. Beasts and Horses,—especially such of the former as had been turned to feed, *That they had been kept a great part of the Time upon the Eddish or After-grafs of Lands, which had before paid Tithe of Hay in kind.*

Here then is a recent Case of a Bill Filed in direct opposition to all the above Doctrines and Principles of Agistment Tithe, laid down in the Law-Books before-mentioned. A Case where Sheep, after paying a full Tithe of Wool in Kind, and being kept afterwards in the same Parish upon the Eddish or After-grafs of Lands, which had likewise before in the same year paid Tithe of Hay in kind : And likewise where Beasts and Horses, which had

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had been kept upon the very same Lands, notwithstanding all the above Cases and Authorities, and every other which could be adduced, were urged by the most able Counsel on the opposite side in their full Force, and to the utmost Advantage, *Are all ordered by an unanimous Decree in the Court of Exchequer, to account for the Tithe of their Agistment, during all the time they were kept upon such Lands, in the following Words, viz.*

EXTRACT from the DECREE.

“ And it is further ordered, ad-
 “ judged, and decreed by the Court,
 “ that an Account be taken of what is
 “ due to the Plaintiff, for the Tithe of
 “ the Agistment of all Sheep which
 “ were kept, fed, and depastured on the
 “ Lands occupied by the said Defend-
 “ ants, &c. &c. during the time in the
 “ Bill mentioned, and by them fatted
 “ and sold off, or otherwise disposed
 “ of,

C

From

(18)

“ From the time of their last Shear-
 “ ing, until they were sold off Fat,
 “ or taken out of the said Parish, be-
 “ fore the next Shearing thereof.”

“ And that an Account be likewise
 “ taken of what is due to the said
 “ Plaintiff, for the Tithe of the Agist-
 “ ment of All Barren and Unprofitable
 “ Cattle kept, fed, and depastured on
 “ the Land of the said Defend-
 “ ants,” &c. &c.

From this Decree, which is of so late
 a Date as the Time before-mentioned, in
 a Cause, the Hearing of which took up
 two whole Days, during all which Time,
 all the Barons attended, and in which no
 less than seven eminent Counsel were con-
 cerned, it is evident, *That it is immaterial*
upon what Lands these Sheep and Barren and
*Unprofitable Cattle were kept ;—*Whether
 upon Land which had before paid Tithe
 of Hay or Corn in kind in the same Year,
 Or upon Summer-eaten Ground, which
 had paid Tithes in kind for Lambs,
 Fleeces

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Fleeces and other Things ;—They are all
 ordered to account to the Plaintiff for the
 Tithe of their Agistment ;

The Sheep from the Time they were
 last shorn, till the Time they were at any
 time before the next Shearing fold, or re-
 moved out of the Parish ; And

The Barren and Unprofitable Cattle
 during all the Time they, being so, were
 kept in the Parish ;—each according
 to the Value of their Keeping per Week,
 Month, &c.

And the Decree is founded upon the two
 general Principles before laid down, viz.

That the Tithing-man is entitled to
 the Tenth Part of the Produce of the
 Land, or the Value of it :

And consequently,

So often as there is a new Increase, so
 often a new Tithe becomes due.

C 2

CHAP.

C H A P. IV.

Neither the Improvement of the Carcass of the Sheep, Beasts, or Horses, whilst kept in the Parish,—Nor the Profit which the Occupier of the Land receives from either,—Nor the Pound-Rent of the Land,—Any Rule by which to value the Tithe of Agistment.

THE first of the two general Rules above laid down, will rectify a mistake, which many, both of the Clergy and Lay Tithing-men, have fallen into, respecting Agistment Tithe; who have imagined that the Persons to whom this Tithe is due, is entitled to the *Tenth Part of the Profit* which the occupier of the Land may at any time receive from the Keeping of his Sheep, Beasts, and Horses.

But this is setting up a claim to which he has no right. For the Tithing-man, being entitled to the tenth Part of the Produce of the Land, or the Value of it, has
no

no claim upon the Occupier or owner of the Stock for any part of his Profit.—Whether the Occupier gains or loses—or what he gains or loses, by the Keeping of his Stock,—the Tithing-man has no share or concern in either;—but only in the value of their Pasturage whilst kept in his Parish.—To that, and to that alone, is his right to Agistment Tithe confined.

Thus, should a Farmer in the Spring have a Dozen Beasts of equal Value or Price, which he sells off the latter end of the year, some for five Pounds Profit, others for Forty Shillings, the rest for none at all. The Tithing-man being entitled to no part of it, has no right to be resolved as to the particular Profit he received from the Keeping of each, but only to the Tenth Part of the Value of the Depasturage of each per Week. And if they were all kept upon the same Land, or of the same goodness, they ought all to pay alike for the Tithe of their Agistment;—those from which the occupier received no Profit,—or even was a loser
by

(22)

by—as those from which he received the most;—The Improvement or Non-improvement of the Beasts depending solely upon the Skill or Ignorance of the Occupier, in which the Tithing-man has no concern, and in which therefore, as he runs no hazard from the one, he ought to reap no advantage from the other.

It may not be improper here to take some Notice of the following Paragraph in Dr. Burn's Ecclesiastical Law, vol. 3, p. 421, quoted from Dean Watson, Chap. 50.

“ As to the manner of paying Tithe of
 “ Agistment where no special custom is,
 “ if it be paid for guest Cattle taken in,
 “ it is said, that the tenth part of the
 “ money received is payable for Agist-
 “ ment;”

“ If for the Owners Cattle, then the
 “ Tithe shall be according to the value of
 “ the Land, after the rate of two Shillings
 “ in the Pound;—for that they cannot
 “ otherwise be valued or accounted for,
 “ because

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“ because the Profits of the Lands for
 “ which they are paid are received by the
 “ Mouths of the Beasts.”

It might here be asked, whether or no—wherever Two Shillings in the Pound, according to the value of the Land, can legally be demanded by the Tithing-man, it is not so to be demanded in Lieu of all Tithes whatsoever, Rectorial as well as Vicarial?

And further, Are the same Lands, besides paying after the Rate of two Shillings in the Pound-Rent for the Tithe of Agistment alone, to pay likewise Tithe of Hay, Wool, and Lamb in kind in the same Year?

The truth is, the Value or Pound-Rent of the Land is no ways concerned in the Tithe of Agistment, nor ought therefore to be any rule for the Payment of it. Nor indeed where profitable and unprofitable Cattle are kept together,—can it be: It being impossible in such case to adjust
 or

or ascertain how much of that Rate, of two Shillings in the Pound, the unprofitable shall pay. But in all Cases, the Tithe of Agistment of Barren and Unprofitable Cattle is to be paid according to the Value of the Keeping of each per Week. And the value of the keeping of a Feeding Sheep, a Feeding Beast, or a young Beast or Horse, upon any particular Lands, is as easily ascertained, from the usual Prices given for the depasturing of such Sheep, Beasts, and Horses per week each, in that Parish or Neighbourhood, whether profitable Cattle are kept at the same time upon the same Lands along with them or not.

CHAP.

C H A P. V.

Minutes of Lord Chief Baron Parker's Decree, concerning Agistment Tithe, and the Mode of Payment.

AFTER these Pages were finished, and just going to the Press, the Author had the following Minutes put into his Hands. As they are of such high Authority, and besides giving the best Sanction to the Doctrine advanced in the preceding Chapter, state the Subject in the fullest and clearest Light, they were deemed a most valuable Acquisition, and the insertion of them here therefore indispensable.

Michaelmas Term, 1768.—Decree of Lord Chief Baron Parker, &c. &c.

WILLIS, D. D.	}	“ Agistment Tithes
against		“ are such as are due
HARVEY.		“ upon the Pasturage of
“ Unprofitable Cattle: And Unprofitable		
	D	“ Cattle

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“ Cattle are such as, having neither been
 “ brought to the Plough nor to the Pail,
 “ yield no Tithable produce.—To these
 “ may be added Sheep, from the Time
 “ they are shorn, to the Time they are
 “ fold to the Butcher, or otherwise disposed
 “ of.”

“ What is most material to the Clergy
 “ in the present Case, is, the Mode of
 “ paying these Tithes. Dean Watson;
 “ and if we mistake not, Gibson and
 “ Burn, and other Writers of Ecclesiasti-
 “ cal Law, have propounded, that the
 “ Tenth of the Total, or of the improved
 “ Value, should be paid to the Parson;
 “ that is, if an Ox bred by the Farmer,
 “ and never used in the Plough, is brought
 “ to the Market, the Tithes of what he is
 “ fold for shall be paid; but if he has
 “ been bought at a certain Age, and af-
 “ terwards fold, the Tenth of the impro-
 “ ved Value shall be paid.”

“ This was a vague and uncertain Me-
 “ thod; and in fact not founded on any
 “ legal

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“ legal Principle: For it is not the Tithes
 “ of the Value of the Cattle, which might
 “ be more or less, according to the skill
 “ or ignorance, the good or ill Fortune
 “ of the Farmer, which is due *de jure* to
 “ the Parson. It is the Tithes of the pro-
 “ duce of the Earth consumed during the
 “ Time such Cattle are kept in an un-
 “ profitable State; that is, primarily and
 “ *ob origine* due.”

“ This then must be the Mode of Pay-
 “ ment. A Farmer breeds an Ox, and at
 “ three years old sells him to a Grazier for
 “ seven Pounds. According to the above-
 “ mentioned Authorities, the Parson
 “ would be entitled to fourteen Shil-
 “ lings:—But it shall appear that he is
 “ not; for, upon the same Principle, he
 “ would be entitled to a tenth part of the
 “ Carcase, had the Farmer killed him.
 “ Whereas he could have had no such
 “ right, his claim being founded exclu-
 “ sively on the *Tenth of the Produce con-*

D 2

sumed

“ *sumed by the Animal.* He must there-
“ fore be paid thus :

		<i>Keeping.</i>		<i>Tithe.</i>	
		<i>£.</i>	<i>s. d.</i>	<i>£.</i>	<i>s. d.</i>
“ What is the “ Price of Keep- “ ing the	$\left. \begin{array}{l} \text{1st} \\ \text{2d} \\ \text{3d} \end{array} \right\} \text{Year}$	£ 1	0 0	£ 0	2 0
		£ 1	15 0	£ 0	3 6
		£ 2	5 0	£ 0	4 6
		<hr/>		<hr/>	
		£ 5	0 0	£ 0	10 0

“ When the Ox is in the hands of the
 “ Grazier, a second Tithe arises, pro-
 “ bably to another Parson in another Pa-
 “ rish : He keeps him twenty Weeks, and
 “ then sells him to the Butcher for Ten
 “ Guineas. The improved value is
 “ 3l. 10s. But the Parson shall not be
 “ entitled to seven Shillings for his Agist-
 “ ment Tithe, for then he would avail
 “ himself of the Skill, Address, and Judg-
 “ ment of the Grazier, who, for aught he
 “ knows, may have over-reached the
 “ Butcher, and sold the Animal for more
 “ than he will yield. *It is the tenth of*
 “ *the*

“ *the Price of Keeping him Twenty Weeks*
 “ *that he may claim,* which amounting to
 “ forty Shillings, leaves him four : And
 “ so it is with respect to Colts and other
 “ Animals coming under this Denomina-
 “ tion. And this is the Legal and Equi-
 “ table Mode of Payment.”

CHAP.

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C H A P. VI.

T H R E E C A S E S.

- I. *Of Profitable and Unprofitable Stock kept together.*
- II. *Of the same Lands paying Tithes several Times in the same Year.*
- III. *Of the same Stock paying several different Tithes of their Agistment in the same Year.*

C A S E I.

IT very seldom happens, that an occupier of Land stocks his particular Pastures or Fields either with all Profitable or all Unprofitable Stock. They are generally kept together: But this need occasion no Difficulty, much less any Dispute in ascertaining the Tithe of those which are liable to pay it for their Agistment. So many, and such Stock as are so liable, which

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which have been kept upon such Lands, are to account for their Tithe according to the Value of the Keeping of each per Week, the same as if there had been no other Stock kept upon such Lands along with them; and such other Stock as are Profitable, viz. Milch Cows, Mares with their Foals, Ewes and Lambs, and Working Horses, and therefore not liable to pay this Tithe, are to account for their Tithe in a different way, either in kind or by Modus for each. The following Paragraph is thus to be understood, viz.

“ Where Profitable and Unprofitable Cattle feed together, Tithe shall be paid in kind for the Profitable, and Agistment for the Unprofitable.” Burn’s Eccles. Law, vol. iii. p. 421.

C A S E II.

Suppose an Occupier of Land mows any of his Pastures in July, and pays the Tithe of the Hay in kind. At the proper Time he turns Feeding Beasts upon the Eddish, or

or After-grafs, which must pay the Tithe of their Agiftment, during the Time they are kept upon it, according to the Value or usual Price of the Depafturage of fuch Beasts per Week upon fuch Eddish, or After-grafs, in that Parish or Neighbourhood.

After the Eddish is confumed and eat up by these Beasts, other Barren and Unprofitable Cattle are put and kept upon these same Pastures from that Time till the next Accounting Day; which must pay the Tithe of their Agiftment, during the Time they have been so kept upon those Pastures, according to the Value of the keeping of each fuch Beast or Horse per Week, upon fuch Lands at that Time and in that State.

Here then, the same Land has paid three different Tithes, or Tithes three different Times in the same Year, viz.

- I. Hay in Kind,
- II. Agiftment Tithe for the Eddish, or After-grafs.
- III. And

III. And for the Grafs after the Eddish was eat off; which is directly contrary to the Doctrine before laid down from several of the old Law-Books.

C A S E III.

Suppose a Grazier shears all his Sheep the beginning of July, and, after paying the Tithe of their Wool in kind, in order to feed those that will be fit for Sale that Year, turns them for two Months upon the Eddish of Lands, which have before in the same year paid Tithe of Hay in kind.—The Eddishes in that Time being consumed, these Sheep are turned for three months more upon his best Feeding Summer-eaten Land;—And from that time put upon Turnips for two months more; and, being then fat, are sold to the Butcher, or removed out of the Parish for Sale.

In this case, these Sheep must in the same year pay the several following different Tithes, viz.

- E
- I. Wool

- I. Wool in kind,
- II. Tithe of their Agistment,
From the Time they were shorn,
till sold for slaughter or removed
out of the Parish for Sale, viz.
seven Months, according to the
value of the keeping of each
Sheep per Week, whilst kept
upon such
- I. Eddish, or After-grafs,
- II. Summer-eaten Land, And
- III. Turnips,
respectively.

CHAP.

C H A P. VII.

- Turnips*
When Eaten,
- I. *By Sheep removed out of the Parish
before their next Shearing.*
 - II. *By such Sheep as are kept afterwards
in the same Parish till shorn.*
 - III. *By both Sheep and Beasts, both Pro-
fitable and Unprofitable.*

IN several Counties great quantities of Turnips are grown every year;—in others, the Common or Town Field is, by agreement of the several occupiers, entirely turniped every fourth year.

Turnips are generally eaten by Sheep of some kind or other

- I.
By Feeding Sheep, which some months after the time of the last shearing are turned to feed upon Turnips, and when so fatted

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are all slaughtered, fold, or removed out of the Parish before they are shorn again.

In this case, where the Turnips are not consumed by the occupiers own sheep, but by those of some other Person, either of the same or any other Parish, taken in to keep for hire, either at so much per Acre, or at so much per Week each, during their being so kept, the tenth part of the Bargain is due to the Tithing-man, payable by the owner of the Turnips,—not by the owner of the Sheep.

But where the Turnips are eaten by the Occupiers own Sheep, the Tithe must be estimated, either

I. According to the Value of the Turnips per Acre;

Or,

II. According to the Value of the keeping of each per Week of the Sheep which have eaten them.

II.

Turnips are sometimes eaten by Ewes or Lambs, or both, which are afterwards kept
in

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in the same Parish till after they are shorn again.

In this case, whether such Turnips are eaten by the Occupiers own Sheep, or by those of any other Person, no Tithe of Agistment for the keeping of such Sheep, nor in any respect for such Turnips, is due; since the sheep which consumed them were kept in the Parish till they yielded to the proper Tithing-man the Tithe of their Wool, or the customary Modus or Composition for it.

III.

Where Turnips are eaten by sheep, some of which are slaughtered, fold, or removed out of the Parish before,—others kept till after they are shorn;—Or where any kind of Cattle, whether profitable or unprofitable, or both, are kept upon Turnips along with Sheep;—In all such cases the Tithe of Agistment due, can only be ascertained from the value of the keeping of each such sheep as were fold or removed out of the Parish before Shearing:
And

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And of the barren and unprofitable Cattle per Week, during the time of the keeping of each upon such Turnips, since the last Accounting Day, in the same manner as where all such Sheep and Barren and Unprofitable Cattle have been kept together upon Grass Land, as mentioned in the preceding Chapter.

Though what hath been said *there*, be equally applicable to all kinds of Stock whilst agisted wholly upon Turnips, and the cases *here* stated may, to many, seem a mere Repetition of what hath been advanced in that Chapter, and therefore superfluous; yet as the design of this Treatise is to obviate as much, every apparent or probable Difficulty, and to render every circumstance as plain and easy, as possible, in order the more effectually to accomplish these Purposes,—of the two, the Author chose rather to appear more particular and explicit than necessary to some, than to others to have left any Case which might at any time occur, not sufficiently explained.

CHAP.

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C H A P. VIII.

Beasts and Horses, though reared for the Plough and Pail, to pay Tithe for their Agistment, except whilst actually so used, or kept as breeding Stock.

IT was long a very prevalent Opinion, and is yet zealously supported by many of the Laity, and acquiesced in by the Clergy, from its being asserted in several of the old Law-Books, and the Tithing-Table before-mentioned, that Beasts and Horses shall not pay Tithe of their Agistment from the time they are weaned, till they are used for the Plough and Pail, *because they are reared for that Purpose*, and therefore will hereafter become profitable to the Tithing-man in a different way, or yield him a Tithe of a different kind.

Thus, “No Tithe is due, from an occupier of Land, for the Pasture of young Cattle, reared to be used in Husbandry, or for the Pail.” Bac. Abr. vol. v. p. 53.

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But the old Maxim in Law ought here to be remembered, viz. That all Tithes, *annuatim renovant*.—They become due and payable yearly, either at Easter or some other certain and fixed Time.—And until such Beasts and Horses are actually brought to the Plough or Pail, and continue so to be used, or as Breeding Stock, they must, so long as they have been so kept in the Parish, from the last Accounting Day, pay a Tithe for their Agistment: And whoever should hereafter presume to support such an Opinion as the above in Westminster-Hall, would find it meet with the same Fate with the Precedents already produced upon this Subject from the same Authorities. They are only exempt from the payment of Agistment Tithe, whilst actually used at the Plough or Pail, or kept as breeding Stock: And they are then so exempt, because they are profitable, or yield a Tithe to the Tithingman in another way. But from the time they are weaned, till they do yield such Tithe, or otherwise become profitable to him, they are Barren and Unprofitable Cattle,

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Cattle, and in consequence thereof must account *annually* for the Tithe of their Agistment, during the Time they have been so kept in the Parish, or upon any Common Field, Common, or Fen belonging to it, according to the value of the Keeping of each per Week, &c. &c.

And, “ When Milch Cows are become
 “ dry, and are depastured as dry Cattle,
 “ though but for a Month, an Agistment
 “ Tithe shall be paid for them; and so it
 “ is if they are fatted and sold.” Boh. 96.

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CHAP.

C H A P. IX.

Value of each Species of Agistment Tithe.

S H E E P.

THE Value of the Depasturing of Sheep from the Time they were last shorn, and then turned to be fatted for Sale or Slaughter, till the Time they were removed out of the Parish for that Purpose, was stated in the Bill above-mentioned, at the rate of *Ten-pence per head per Month*;—that is, Two-pence half-penny per head per week; and the Tithe of the Agistment of each, consequently One Penny per head per Month.

And upon a Commission issued out of the Court of Exchequer, previous to the Hearing of the Cause; the Keeping of such Sheep, was proved on the part of the Plaintiff, by four Witnesses, who were Principal Graziers in the Neighbourhood, and entirely disinterested in the Affair, and who had together taken a view of the Defendants

Defendants Lands, to be Worth what it was stated at in the Bill.

The Witnesses each gave, as their Reasons for so stating the Value of the Keeping of such Sheep,—That they had themselves frequently given so much, but oftener more, per Week for the Keeping of such Sheep upon such Lands:

And that whenever they wanted Keeping for such Sheep, they would willingly give so much per Week for the Keeping of them upon the Defendants Lands, or any other Lands equally good.

The Keeping of Barren and Unprofitable Cattle, was, by Agreement, settled at the following Prices, viz.

H O R S E S.

Yearling Colts	or	} 0 0 9	} Per Week Each:
Fillies at			
Two Years old ditto,	} 0 1 6	}	
And Upwards			
	F 2		BEASTS.

B E A S T S.

Steers and Heifers	{	1	2	—	—	004	} per Week Each.
		2	3	—	—	006	
		From 3	To 4	Years old -		008	
		4	5	—	—	010	
		5	6	and upwards		016	

It is to be remembered, that the Prices of the Keeping of Feeding Sheep, and of Barren and Unprofitable Cattle, here stated, are such as were either proved upon Commissions issued out of the Court of Exchequer for that Purpose; and afterwards fixed by the Report of the Master in Chancery, or agreed to by the Parties themselves, and settled in the Parish for the Tithe of the Agistment of which the Decree was given; and cannot be pleaded as Precedents, or binding in any other, farther than the Persons who have such Agistment Tithe to pay, and he who has it to receive, mutually chuse to make them so. It is well known that the Value of the Keeping of each of the Articles above-mentioned, is, in most parts of the

the Kingdom, much higher than is there stated; and where the Price of Keeping or Agistment varies from it, the Tithe thereof must vary in Proportion. The difference, even in the same County, in parts at no great Distance from each other, may be very considerable, according to the Goodness or Price of the Land, or several other Circumstances. In all which Cases, should any Dispute at any time arise, respecting the *Quantum* due for the Agistment of either Sheep, Beasts, or Horses, whilst kept in any Parish, such disputes can no otherwise be determined than by the Price generally given at that Time of the Year for the Agistment of such Sheep, Beasts, or Horses, in the Parish or Neighbourhood where this Tithe arises. For had such stock not been the Occupiers own, but other peoples taken in to agist for hire, at so much per Week each, in that Case the Tenth Part of the Bargain had been due to the Tithing-man; and his own Stock therefore, as having been kept upon the same Ground, and eaten

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eaten the same Grass, must pay in the same manner, that is, According to the Value of the Keeping of each per Week, &c. &c.

CHAP.

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C H A P. X.

Method of ascertaining the Tithe of the Agistment of Sheep.

ALL Sheep which, after being shorn, and paying a full Tithe of Wool, are afterwards kept some time in any Parish, and then removed out of it for Sale, Slaughter, or any other Purpose, before their next shearing, must pay a Tithe for their Agistment, from the time of their last shearing, till the Time they are so removed out of the Parish, according to the Value of the Keeping of each per Week.

Suppose then any Farmer or Occupier of Land shears all his Sheep in any Year, on or about the first Day of July; and having kept them some time afterwards, in the same year, sells off those which are come to a proper Age, at different Times, and in different Parcels, according as they become Fat or fit for Sale, at
the

the following Times and in the following Numbers.

1778.
Sheep Sold or Removed out of the Parish of — By — since last Shearing-Day, viz. 1st July.

Time	N ^o .
When fold.	Sold.
July 22d,	20
Ditto 30th,	15
August 6th,	7
Ditto 27th,	12
September 10th,	21
Ditto 24th,	24
October 4th,	8
Ditto 18th,	30
Ditto 31st,	16
November 12th,	10
Ditto 30th,	21
December 17th,	18
Ditto 31st,	16
January 8th,	10
February 20th,	12

It

It is here to be observed, that with respect to these Sheep, and their paying Tithe of their Agistment, the year is not to be reckoned from one *New-year's Day* till the next, nor from one *Lady-Day*, *Easter*, or *Midsummer* till the next; But from one *Shearing-Day* till the next: So that all Sheep which are sold or removed out of any Parish, betwixt one Shearing time and the next, are all said to be fold or removed out of that Parish in the same Year, though some may be so removed in July, and others not till the February, March, or April following.

This observation being premised, let us proceed to ascertain how much all and each Parcel of the above Sheep are to pay for the Tithe of their Agistment, supposing the Value of the Keeping of each from the Time of their Shearing, viz. the 1st of July, till they are respectively sold or removed out of the Parish, to be stated at Ten Pence per head per Month, and consequently the Tithe at One Penny per head per Month.

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To do this, will at first, perhaps, equally puzzle both the Person who is to pay, and the Person who is to receive such Tithe. Nor will either of them, perhaps, be so much surprized at their being so puzzled, after they have been informed, that in one Single Person's Account, which was made out by his own Solicitor, in Pursuance of an Order from the Court of Exchequer, in order to be brought before the Master in Chancery or Deputy Remembrancer, for him to make his Report upon it, and which, when so made out, amounted to no more than Twelve Pounds some odd Shillings, when rightly and exactly cast up, amounted to upwards of Twenty-six.

And this Deficiency was occasioned neither from having an unjust Number of Sheep given in, nor from any Design of giving in an unjust Estimation of the Tithe of their Agistment; but solely from the want of knowing the right Method of ascertaining such Tithe.—Both the Solicitor and his Clients were led into this enormous

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mous Error in the Account, from an opinion which they all very strenuously maintained; That the Tithe of Agistment, particularly of Sheep, was only a Monthly Tithe, and became due no oftener than once a Month from the Time of the Sheep's being Shorn. So that they insisted, should any Number of Sheep be shorn on the first day of July, and removed out of the Parish before the twenty-eighth day of the same Month, no Tithe was due for the Agistment of such Sheep; Or if kept above seven Weeks, but less than eight, they were to pay Tithe only for one Month; and so on.

Nor could they be prevailed upon to give up this opinion, till they were shewn the following Extract from the established Rule in this Case; which, upon appealing to the Court, was not only declared to be reasonable and right, but confirmed by an Order for the Defendants to account accordingly.

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Speaking

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Speaking of Sheep, after saying,

That, " It is now clearly held that
 " an Agistment Tithe shall be paid
 " for them as unprofitable Cattle in
 " every Parish where they have been
 " depastured;" It is added,

" And no regard is had to the Dis-
 " tinction, whether they have con-
 " tinued for less than a Month; *for*
 " *there is the same Equity that Tithes*
 " *shall be paid for one Day as for*
 " *Thirty.*" Burn's Eccles. Law, 8vo.
 Edit. Vol. III. Page 446.

Upon this Principle, then let us return to the question of ascertaining the Tithe of the Agistment of the above-mentioned Sheep, under the circumstances there stated; that is, reckoning their Keeping at the rate of Ten Pence per Head per Month, and the Tithe, therefore, of each, at one Penny per Month; and taking likewise the particular Numbers and different Times from their being shorn, of their being removed out of the Parish, as there specified.

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Though at first, perhaps, this may seem otherwise, it is very easy to be done to the utmost exactness, and without any Fractions, if the right method only be adopted: And in order the better to understand, as well as to illustrate the truth of the following Method; which is the only one by which this Species of Agistment Tithe can be ascertained with any Degree of exactness at all, it must be considered,

That the *Keeping seven Sheep One Day*, is the same as *Keeping One Sheep seven Days*. To keep *seven Sheep four Days*, is the same as to keep *one Sheep four Times seven Days, or One Month*.

In the above account the first Parcel of Sheep sold off is Twenty, sold the 22d of July—that is, twenty-one Days after Shearing—which is the same as *keeping one Sheep twenty Times twenty-one Days, or Four Hundred and Twenty*;—Which Number *divided by Twenty-eight*, the Days in a Month, gives fifteen for the Quotient,

or

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or Number of Months. Reckoning therefore the Keeping of these Sheep at the rate of Ten Pence each per Month, and the Tithe therefore at One Penny, the Tithe of the Agistment due for these Twenty Sheep removed out of the Parish twenty-one Days after Shearing is *Fifteen Pence*. The following therefore is the

General Rule for Ascertaining the Value of the Tithe of the Agistment of Sheep.

Take the Number of Days from the Day of Shearing till the Day each Parcel of Sheep is removed out of the Parish—Multiply that Number of Days by the Number of Sheep in that Parcel; the Product will give the Number of Days which that particular Parcel of Sheep has been kept in the Parish,—Do the same with respect to each Parcel, and then add all the Products together, and the sum total divided by twenty-eight, the Number of Days in a Month, will give the Number of Months the whole Number of Sheep have been kept in the Parish after Shearing.

This

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This Number of Months, stating the Keeping of each Sheep at Ten Pence per head per Month, and consequently the Tithe at One Penny each per Month, will give the whole Number of Pence due for the Tithe of the Agistment of the whole Number of Sheep, which divided by twelve, and that Quotient by twenty, will give the Pounds, Shillings, &c.

But in order that Nothing may be wanting to render this Method of calculating, to the utmost exactness, the Tithe due for the Agistment of Sheep, as plain and perfectly intelligible as possible, the following Operation of the above Account at large is subjoined.

SHEARING-

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SHEARING-DAY.

N ^o . of Sheep.		Days.
20	July 22d,	440
15	Ditto 30th,	450
7	August 6th,	259
12	Ditto 27th,	696
21	September 10th,	1512
24	Ditto 24th,	2064
8	October 4th,	768
30	Ditto 18th,	3000
16	Ditto 31st,	1968
10	November 12th,	1350
21	Ditto 30th,	3192
18	December 17th,	3042
16	Ditto 31st,	2928
10	January 8th,	1910
12	February 20th,	2808

Kept till } The same as }
 One Sheep }
 kept }

Total Number of Days 26387

28)26387(942 Total Number of Months.

252
 ———
 118
 112
 ———
 67
 56
 ———
 11

(57)

12)942(78=£ 3 18 6

84
 ———
 102
 96
 ———
 6

The above two hundred and forty Sheep therefore being kept some time in the Parish after their last Shearing, and then removed out of it for Sale or Slaughter, at the several different Times, and in the several different Parcels specified in the above Schedule, the Tithe of their Agistment is to be reckoned the same as if *One single Sheep had been kept in the Parish twenty-six thousand three hundred and eighty-seven Days, or nine hundred and forty-two Months,—or, in this Case,—Pence.* From whence it appears, that the Tithe of their Agistment amounts to the sum of, *Three Pounds Eighteen Shillings and Six-pence.*

And when Sheep are sold or removed out of the Parish Lean, as happens to be

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the case when a person removes out of the Parish, and takes all his Sheep, both Fat and Lean together, along with him, the keeping of the Lean being not worth so much as of the Feeding Sheep, as they are kept either upon worse Land, or a greater Number upon the same Number of Acres, the Tithe of the Agistment of such Sheep must be estimated accordingly.

CHAP.

(59)

C H A P. XI.

The Method of ascertaining the Tithe of the Agistment of Barren and Unprofitable Beasts and Horses.

THE ascertaining the Value of the Tithe of these two Species of Agistment, does not require the same Arithmetical Operations as in the Case of Sheep, but is much more simple, easy, and short;—and as it is much less difficult, is likewise less liable to any mistake;—or should any mistake be at any Time committed, such mistake is more easily discovered. For instance, suppose a Farmer produces the following Account to the Tithing-man, viz.

Barren and Unprofitable Beasts and Horses agisted by ——— in the Parish of ——— since the last Accounting Day—

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Whether

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Whether New-Year's Day,—Lady-Day, Easter, or any other Day, according to the usual or established time of reckoning for other Tithes.

4 Yearling Beasts	}	0 6 8
kept Five Weeks at 4d. per Week each		
3 Two Year Old ditto	}	0 9 0
Six Weeks at 6d. ditto		
4 Three Year Old ditto	}	1 6 8
Ten Weeks at 8d. ditto		
6 Four Year Old ditto	}	3 12 0
Twelve Weeks at 1s. ditto		
10 Five Year Old Fatted Beasts	}	15 0 0
kept Twenty Weeks at 1s. 6d. ditto		
4 Yearling Horses	}	4 10 0
Thirty Weeks at 9d. ditto		
6 Two Year Old ditto	}	13 10 0
Thirty Weeks at 1s. 6d.		
Total Value of Keeping	£.	38 14 4
Tenth part due to the Tithing-man	£.	3 17 5

CHAP.

(61)

C H A P. XII.

Barren and Unprofitable Beasts and Horses, to pay Tithe of their Agistment all the time they are kept at Grass.

SUCH Beasts and Horses as have above been described to be liable to the payment of Agistment Tithe, are kept,

1st, The greatest part of the Year upon Grass Only.

2d, Some part of it upon Grass, and foddered at the same Time with Hay.

3dly, And sometimes in some places confined in the House, or in a Crew-Yard, and kept wholly upon Hay or Straw.

There can be no doubt of their being liable to pay this Tithe whilst kept wholly upon Grass.

But

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But many have been apt to dispute their being so liable in the second Case, where they are kept in part upon Hay or Straw, and have contended, that as soon as they are begun to be so foddered with Hay or Straw, they are exempt; because that Hay and Straw has either paid Tithe in kind, or a Composition in lieu of it.

But there is not the least reason for any dispute upon the case,—it will not admit of any. They are certainly liable to Tithe of their Agistment whilst kept partly upon Grass, and partly upon Hay;—though, *perhaps*, not so much as when kept wholly upon Grass. For the Eat or Depasturage of the Lands, upon which these Beasts and Horses are suffered to go at large, whilst they are at the same time foddered with Hay, is worth Something;—and the tenth part of that Worth or Value is due to the Tithing-man, for the Agistment of such Beasts and Horses; and must be ascertained according to the customary Price of Keeping per Week, of such Beasts and Horses upon such Lands, at that particular

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particular time of the year, in that particular Parish or Neighbourhood.

It is said above, that these Beasts and Horses are, *perhaps*, not liable to pay so much for the Tithe of their Agistment, when, though in an open Pasture at large, they are at the same time foddered with Hay. The reason of this doubtful expression, is this: Such Beasts and Horses as are liable to the Payment of this Tithe, are never so foddered but in a rigorous Season;—in a Temporary Severity of Weather;—either in a hard Frost;—Or when the Ground is covered with Snow.

The first Case neither entirely exempts, nor entitles such Beasts and Horses to any Abatement of this Tithe, since they are acknowledged to eat, during that Time, as much Grass, as in the mildest part of the winter Season;—And the Hay given them besides, at the same Time, is an additional sustenance, which the Owner, for their better Preservation or speedier Improvement

(64)

ment in the Spring, voluntarily bestoweth upon them.

It is in the other Case only therefore, viz. during the Grounds being covered with Snow—whilst it continues, that this Abatement, or rather Total Exemption ought to be admitted.

All this, however, is here mentioned, merely as a matter of strict Right, in the insisting upon which tho' the Tithing-man might perhaps be *legally* right, he certainly would be *prudentially* wrong,—it being one of those Cases where he *may*, rather than where he *ought*, to make a Demand.

Whilst Barren and Unprofitable Cattle are kept wholly either upon Hay or Straw, they are undoubtedly exempt from the Payment of Agistment Tithe: For though the Carcases of such Beasts and Horses may be improved, and the Owner of them may receive a Profit from their being so kept; yet, as the Tithing-man has no concern

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concern in such Improvement or Profit, but merely to the Tenth part of the Produce of the Land, or the Value of it, and is supposed to have received the Tithe of Hay or Corn before, or a Composition in lieu of them;—and there is, in this Case, no new increase, nothing is due on Account of such Beasts and Horses, whilst they are so kept.

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CHAP.

C H A P. XIII.

How many Weeks, upon an Average, such Barren and Unprofitable Cattle as are kept the whole Year round in the Parish, are to pay Tithe of their Agistment,—And the particular sum to be paid annually for each.

THIS must depend wholly upon the Usage in the different Parts of the Kingdom, how long such Beasts and Horses are kept either in the House, or confined in a Crew-Yard, and fed solely upon Hay or Straw. For so long, and no longer, as has before been observed, are they exempt from the Payment of Agistment Tithe.

In the Parish for which the Decree above-mentioned was obtained, and in consequence of it, the average Value of the Keeping per Week, according to which each Species of Barren and Unprofitable Cattle was to pay Tithe of their Agistment,

ment, the Time for which they were to pay was stated by the Plaintiff at *Thirty-two Weeks in the Year*, though it was known and acknowledged by the Defendants themselves that they were kept much longer than that Time at Grass;—nay, that such Beasts and Horses were often kept *the whole year round* in Open Pastures upon Grass, with only a little Hay given them in the depth or severest part of Winter—in hard Frosts, or whilst the Ground was covered with Snow, and therefore, in strictness of Law, were liable to pay Tithe for their Agistment during the whole Year.

But taking the Price of the Value of the Keeping of each Species of Barren and Unprofitable Cattle as stated above, and the Time for which—supposing them kept in the Parish from one Accounting Day till another—they are to pay, being likewise fixed at no more than thirty-two Weeks, then the particular Sum to be paid yearly for the Tithe of each Barren and Unprofitable Beast and Horse will be found

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pretty nearly ascertained in the following Table, at least as near as is necessary for the present Purpose.

For B E A S T S.

From	$\left. \begin{array}{l} 1 \\ 2 \\ 3 \\ 4 \\ 5 \end{array} \right\}$	To	$\left. \begin{array}{l} 2 \\ 3 \\ 4 \\ 5 \\ 6 \end{array} \right\}$	Years Old	$\left\{ \begin{array}{l} 0\ 1\ 0 \\ 0\ 1\ 6 \\ 0\ 2\ 0 \\ 0\ 3\ 0 \\ 0\ 5\ 0 \end{array} \right\}$	Per Annum Each
------	--	----	--	-----------	---	-------------------

For HORSES, whether Colts or Fillies,

From	$\left\{ \begin{array}{l} 1 \\ 2 \end{array} \right\}$	To	$\left\{ \begin{array}{l} 2 \\ 3 \end{array} \right\}$	Years Old	$\left\{ \begin{array}{l} 0\ 2\ 6 \\ 0\ 5\ 0 \end{array} \right\}$	Per Annum Each
------	--	----	--	-----------	--	-------------------

And any of these kept any less Time, to pay in Proportion to the Time they have been kept, in the manner stated in the eleventh Chapter.

But here it must be remembered, that all these Estimates are much under the real Value. For the Price of Keeping both of Sheep and of Barren and Unprofitable

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able Cattle, are stated from the Customary Prices given in a part of the Country where Agistment is cheaper than in any other Part of the Kingdom; and the Time for which they are to pay, even according to such Prices, if kept the whole year in the Parish, is stated at no more than Thirty-two weeks;—whereas in every Part of the Kingdom such Stock is kept much longer at Grass:—And, as has before been observed, all such Barren and Unprofitable Cattle are liable to pay Tithe for their Agistment all the Time they are kept at Grass, even if they are at the same Time foddered with Hay.

CHAP.

(70)

C H A P. XIV.

*An Estimate of the Value of the Tithe of
Agistment Per Acre, through a whole
Parish, Per Annum, upon an Avergage.*

FOR an Occupier of Land, or Farmer, to be obliged to keep such Accounts as the above, and give them in annually to the Tithing-man every Accounting Day, is equally disagreeable, tedious, and troublesome to both; and besides, many Disputes may arise in making out and settling such Accounts, from the objections which may be urged by either Party, as to the particular Time and manner of charging; and in consequence of these, of the particular sum due for each particular Article.

The only way to prevent for the future all these disagreeable Circumstances, and obviate the Evils to which such Accounts are liable, would be to ascertain, as near as possible, the Amount of this Tithe for a
Number

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Number of Years past, separately from each particular Person in the Parish, and after taking the Average Sum per Annum, to calculate what it comes to per Acre, for All the Lands each of such persons respectively or separately occupies in the Parish.

The greatest Tithe of Agistment arises in those Countries or Parishes where the most Land is grazed;—in which no more Land is permitted to be ploughed, at least for any long Time together,—than is necessary for the use of the Occupier's own Family:—In very large Farms, not more than an eighth or at most a sixth Part,—but in general not so much as either, of the whole.

In such Countries, the Tithe of Agistment alone, exclusive of all others, in any particular Parish, I have reason to assert, will amount, upon a reasonable and moderate Calculation, to a sum equal to *Six Pence*, or at any Rate, to not less than *Four Pence per Acre per Annum for all the
Lands,*

Lands, including the ploughed, contained in such Parish: For instance, In any Parish in a grazing Country containing Three thousand Acres, the Tithe of the Agistment of Sheep and of Barren and Unprofitable Cattle alone, exclusive of all others annually arising in such Parish, will amount to Fifty Pounds per Annum *at least.*

And this Estimate, it is to be presumed, may the more be depended upon, and be here given with the greater confidence, as it is taken, not from mere Theory or vague Calculation; but from Experience and matter of Fact. For by the Decree above-mentioned, the Defendants were ordered to account for

- “ The Tithe of the Agistment of all
- “ Sheep fold, &c. &c. And of All
- “ Barren and Unprofitable Cattle,—
- “ From the Time of the Plaintiff’s
- “ Induction to the Living,—upwards
- “ of eight years.”

And in consequence of this Decree, after many Commissions from the Court of Exchequer,

Exchequer, upon which many Evidences were examined upon Oath, before Commissioners appointed for that Purpose, in behalf of each Party, at a very great Expence, in order to ascertain the Value of the Keeping, as well of such Feeding Sheep as were liable to pay the Tithe of their Agistment; As also of each Species of Barren and Unprofitable Cattle;—and the Prices of each were at last either fixed by the Master in Chancery, or settled by agreement betwixt the Parties themselves, as mentioned in the Tables or Schedules above; two Commissioners were appointed, One on the Part of the Plaintiff and the Other on that of the Defendants, in order to take an Account of what was due to the former from each Person in the Parish, for the eight Years Arrears of such Agistment Tithe;—In taking which Account, instead of estimating the Tithe of the Sheep at a Penny per head per Month, the Commissioners by Consent reckoned it at no more than three Farthings:—And the Beasts and Horses at the very low Rate above specified;—but instead of *Thirty-*

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two Weeks, made those which had been kept the whole year round in the Parish accountable only for *Twenty-six*:—Yet after all these Abatements, Allowances, and Curtailings, the amount of the Ar-rears, for the eight Years, came to full Four Pence per Acre per Annum, upon an Average, for all the Lands the Defendants and other Inhabitants had occupied in the Parish during that Time.* And it cannot be imagined that the Accounts for *so long a Time back*, of things, of which no Tithe had ever before been paid or demanded, and of which, of course, no particular Account had been kept, *could be very exact*.

If, under all these Disadvantages, the Tithe of Agistment taken upon an Average for eight years, amounted to *Four Pence per Acre per Annum*, under different Circumstances,

* The whole Parish comprehends upwards of seven thousand seven hundred Acres, exclusive of the Common and Sea Marsh,—upwards of five thousand of which are what, in that Country, viz. the Fenny part of Lincolnshire, are called High Land,—that is, not liable to be overflowed in the Winter.

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cumstances, and making no more than just Allowances and reasonable Deductions in favour of the Occupier, this Tithe alone, exclusive of every other, would, it may fairly and justly be presumed, amount at least to Six Pence per Acre per Annum, for all the land including the ploughed, throughout any whole Parish, where it is chiefly grazed.

Near large Towns, where the land is generally very rich, and letts for, perhaps, Three pounds per Acre or upwards, and for particular Pastures stocked chiefly with feeding Beasts, &c. &c. not covered by any Modus for their Agistment,—this Tithe will amount to much more per Acre. In some places it is known to amount to Two Shillings. But these are particular Cases, which do not affect the general Doctrine here laid down, which relates to very Large Farms or whole Parishes in the Country, and where the Land is not lett upon an Average for more than Fifteen or Twenty Shillings per Acre.

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But what has before been premised, must here and always be remembered, that this Tithe will amount to so much per Acre per Annum, only in Parishes where the Land is of the Price or Value before-mentioned, and chiefly grazed.

In arable Countries, or where a great part of the Land is ploughed, it will amount to so little, as, where it has not already been paid, to be scarce worth setting up any new demand for it, even were the occupiers inclined to pay it without Litigation;—to occasion which, was far from being the intention of submitting the preceding Pages to the perusal of the Public; but rather as much as possible to prevent any Disputes which may arise upon the Subject, and the great Expence and Enmity, &c. &c. &c. betwixt the Clergyman and his Parishioners, which are too often, if not always, the consequences of all such Contentions and Disputes: For the Case upon which the Doctrine here laid down is founded, is a very recent One, and every Point in dispute was fully argued;

argued; every possible Precedent, Case, and Argument was produced, by the many and most able Counsel on both sides; nor was one Iota or Inch of ground deserted or given up, whilst the Adversaries had one Foot left to stand upon in defence of it,— Yet after a Hearing of two whole Days, and Time taken afterwards by the Barons for Consideration, the Decree was at last given Unanimously in favour of the Plaintiff, and for every thing set forth in his Bill.

CHAP.

(78)

C H A P. XV.

*Assignment a Vicarial Tithe—Endowments—
different Forms of—Originals—where to
be found—their Authority.—*

A Giftment, though due *communi jure*, is, comparatively speaking, a modern Tithe; and derives its Origin and Existence from Causes and Circumstances of much later date than the Appropriation of Tithes, and the Endowment of the several Vicarages in this Kingdom. It is not therefore particularly and expressly mentioned by name in any such Endowments.

But, from the very Nature of it, it is a Small and consequently a Vicarial Tithe; and there are in all Endowments some words of such general and comprehensive signification, as indisputably to convey the right not only to this, but to several other still more modern Tithes, viz. Woad, Liquorice, Hops, Saffron, Potatoes,

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toes, &c. to the Vicar. For in the original Appropriation of Tithes, the Vicarage was generally endowed at the same Time and in the same Instrument, with a particular Portion of such Tithes; which were given, or rather reserved, for the support and maintenance of the Vicar or Officiating Minister, in some one or other of the three following Forms, viz.

I. In several Endowments the particular Tithes given to the Religious, the Abbot and Convent, &c. &c. from whom they have since been granted and descended to the present Parsons or Impropiators, are all first expressly mentioned by Name.

And then all other Tithes and Tithable Things whatsoever, without particularly mentioning any Thing, are given to the Vicar, by some or all of the general Words following, viz. *Omnes* or *Cæteræ Minutæ Decimæ, &c. qualitercumque.*— Or *Altaragium, et totum Emolumentum ab eodem Altaragio qualitercumque proveniens.*

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The word *Altaragium*, as defined by the Ecclesiastical Law-Writers, signifies All Tithes, Offerings, Oblations, &c. &c. becoming due to a Minister by virtue of his Office—Or, For officiating at the Altar—and consequently has such a Latitude of Meaning as to comprehend every tithable matter, not expressly mentioned in the Endowment amongst the Tithes appropriated.

The word *Altaragium* alone, under the circumstances above-mentioned, will convey the Tithe of Agistment to the Vicar. It was thus allowed in the Author's own Case. The Endowment of his Vicarage was in the Form already mentioned, and he rested his Right to this Tithe solely, upon the following general Words of it. By it the Vicar is to have *Totum Altaragium dictæ Ecclesiæ et totum Emolumentum ab eodem Altaragio, qualitercumque proveniens, —quocumque nomine censeatur— et in quibus cumque consistat vel consistere poterit—absolute et inconcussa, Decimis Garbarum*

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Garbarum—Lini,—Canopi, †—Lance et Agnorum,—Duntaxat exceptis.—i. e.* The Vicar shall have all the Altarage of the said Church; and the whole Emolument accruing from the said Altarage, of what kind so ever; By whatsoever Name distinguished, and in whatsoever Things it may, or shall at any time hereafter consist, fully and fairly—The Tithes of Sheaves of Corn,—Flax,—Hemp,—Wool and Lambs Only excepted.

The Original instrument of the Endowment of this Vicarage, was produced in Court upon the Hearing, and authenticated. It was then upwards of five hundred and six years old, and seemed never to have seen the light for,—at least the greatest part of all that Time. The

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* The word *Garba*, as explained by the Ecclesiastical Law-Writers, signifies, *Fasciculus—Manipulus Spicarum*;—and comprehends all kinds of Grain—even Beans and Peas—from their being tied up in Sheaves or Bundles.

† *Canopi*—so the word is spelt in the Original Endowment, and in several others—though *Cannabis*, or *Cannabi*,—are more frequently used—all signifying Hemp.

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Plaintiff's right under it, to all the Tithes set forth in his Bill, though never before either paid or demanded, was allowed and a Decree given, ordering the Defendants to account for them accordingly.

II. But more frequently the manner in which the great and small Tithes are, in Endowments, appropriated and appointed to the Rectors and Vicars, is directly the reverse of that stated above. The particular Tithes given to the Vicar—or for the maintenance and support of the officiating Minister, are first expressly mentioned and particularly specified—to which are added the general Words; *Cum toto Altaragio, &c. &c.*—Or—*Cum omnibus aliis,*—Or—*cæteris minutis Decimis, &c. &c.*

And then all other Tithes are given or appropriated to the Religious, the Abbot and Convent, &c. &c. from whom they have since come into the Hands of the present Impropiators—without particularly mentioning or specifying any.

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In all such Endowments, either the word *Altaragium, Or, Minutæ Decimæ,* with their Adjunctives, have, in all cases, where this Tithe hath been claimed, ever been admitted to convey it to the Vicar.

III. In some Endowments—if such total dispoliations of Churches of their Tithes can be justly entitled to that name,—the whole Tithes are appropriated; and only a certain Pension or Stipend, specifically mentioned, to be paid annually by the Appropriatee in money—Or such a particular Quantity of Corn, &c. &c.—reserved for the Maintenance and support of the officiating Minister:—The Instances of this kind are very few, in comparison of either of the other two. But wherever this is the case, the Vicar or Officiating Minister is excluded from every Tithe—Altarage and Emolument beyond the Pension, Stipend, or Annual Payment so specified.

Wherever therefore, the Tithes of any Church are divided, and there is a Vica-

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rage Endowed, in order to know how they were originally appropriated and apportioned—and to which, and to which only, therefore, the Rector and Vicar are now respectively entitled, the only way is to consult the Endowment; The Original Instrument,—if yet existing, may be met with either in the Registry-Office of the Bishop, or of the Dean and Chapter of the Diocese—Or Augmentation-Office, New-Palace-Yard, London—And a Copy procured of such Endowment, from the Register of the said Office, or his Deputy.

The first of the above-mentioned Offices, is the most likely to meet with the Endowments of all, or any Particular Vicarage, in any Diocese—But such as are not to be found in any of them, must either have been entirely lost or destroyed, or carried to Rome, with many other Records of the like Nature, at the time of the Dissolution of the Monasteries, or not long after at the Reformation,

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It may, perhaps, be of some Use and Advantage here, to advise every Vicar, who may chuse to apply to any of the above Offices for a Copy of the Endowment of his Vicarge, to give particular Directions to have what is called, *An extended Copy*—that is—One in which all the Words are wrote out at full length.

For the Originals are all in such Old, Uncouth, Obsolete Latin—without either Stops or Capital Letters, and in so very Antique and Uncommon a Character, with all the words so abbreviated, that unless accustomed to the reading of such Writings, he will be able to make out a Column of Egyptian Hieroglyphicks as soon as one Sentence of his Endowment in its Original State. And it may, perhaps, be of equal use to both Rectors and Vicars, and their respective Parishioners, to know of what consequence these Original Endowments are; and in what decisive Authority they are held in all Litigations respecting the Rights of either,

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in every Court, and in every Case where they can be produced, viz.

That the first Endowment cannot be prescribed against. They are of such Authority as no time can destroy. *Nullum Tempus occurrit talibus Ordinationibus.*

In many Cases they have been admitted as sufficient Evidence, to give to the Vicar Tithes never before claimed;—and to restore to him those usurped by the Rector or Impropiator.

The Author hopes he shall be excused for mentioning here his own—and his own only; as he would not presume to advance any thing for which he has not a proper Voucher or Document in his own hand.

The Lessees of the Impropiators had, *Time immemorial*, received *Three Pence each* as an Agistment Tithe, for all Sheep sold or removed out of the Parish in every year, *betwixt Candlemas and Shearing Time.*

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This Receipt—as it could not be denied—the Plaintiff did not pretend to dispute—but laid his claim generally for the Tithe of the Agistment of *all Sheep, from the Time of their last shearing, till they were removed out of the Parish before next shearing*—thus including All Sheep, at whatever Time sold or removed out of the Parish, betwixt one Shearing Time and the next—whether before or after Candlemas.

The Counsel for the Defendants—the Impropiators and their Lessees, long and strenuously urged the having received, *Time immemorial*, the Tithe of Agistment of Sheep, removed out of the Parish during the particular Time of the year, *betwixt Candlemas and the next Shearing*—uncontroverted and undisputed by the Vicar.

This Receipt was proved in their behalf, by Evidences and Leases for at least ninety years;

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years;—a Period, in modern Days, sufficient to establish almost any Right or Mode of Payment respecting Tithes. But the Original Endowment, which was at the same time in Court before the Barons, though of five hundred and six Years. Date, was admitted to have the *same Authority then*, in all respects, as it had the very Day after it was executed; and they, therefore, gave a Decree, ordering an Account to the Plaintiff for the Tithe of the Agistment of All Sheep, fold or removed out of the Parish, betwixt One shearing Time and the next,—as well of those so removed betwixt Candlemas and Shearing, as at any other time of the Year, in the Words above-mentioned in the Extract from the Decree —by which the Lessees of the Impropriators were to account to the Vicar for the Arrears, from the Time of his Induction, and to relinquish to him for the future, their Right, to that part of one species of Tithes prayed for generally in his Bill, which they
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had received time immemorial; and to which, for that reason, neither any of his Predecessors nor himself had ever demanded, nor even thought themselves entitled.

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CHAP.

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C H A P. XVI.

Agistment Tithe having never before been paid—no Bar against the Payment of it, either for Arrears—or the Time to come—&c.

THE being liable to the Payment of any kind of Tithes, under the most favourable Circumstances, hath long been considered—and perhaps justly, as a matter not only disagreeable in itself,—but too often rendered much more so by its consequences.

Notwithstanding the many Moduses, whether Legal or not,—pleaded in almost every Parish, and acquiesced in by the Clergy or Tithing-man, the Payment even of them,—though greatly under the present Value of the Tithes, for which they are paid as a Substitute, is in general performed with much Backwardness; and considered as an oppressive at least, if not an illegal Demand.

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It is therefore not at all surprizing, that the setting up in any Parish, the Demand of an *entirely new Tithe*, never perhaps either paid or heard of there before, should meet with the most ungracious Reception; Or that the Parishioners should refuse to comply with such a Demand, till the Legality and Rectitude of it have been established by the Issue of a Litigation; which after all, oftener silences than satisfies those who have it to pay, of either.

This has generally been the case, with respect to that Species of Tithe which is the Subject of the preceding Treatise. Agistment Tithe hath very seldom—perhaps never yet been paid in any Parish, without being at the great Trouble and much greater Expence of a Decision upon the Right to it in One of the Courts of Equity.

This however, it is to be hoped, will be less frequently the Case for the future; since the Plea, of such Tithe's having never before been paid in the Parish, where

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it is now demanded, hath always been urged, but in no one instance hath it been admitted as the least Bar, either against a Retrospect for the Arrears of such Tithe, or against the Payment of it hereafter.

Agistment, as hath before been observed, is, comparatively speaking, a modern Tithe:—And it is unnecessary here to mention any of the reasons—for a great many very good ones might be assigned, why the Clergy in particular, as well as Lay Tithing-men, have not yet claimed, or at least litigated their right to it—which is the Case in at least one half—perhaps three-fourths of all the Parishes in this Kingdom—exclusive of Wales, in no part of which, it was asserted in the Course of the Hearing of the above Cause, by the present Lord Chief Baron of the Court of the Exchequer—then Mr. Skynner, King's Counsel and one of the Welch Judges, it hath ever yet, in any respect, been paid at all.

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But there can be no doubt of the same demand, at all Times hereafter meeting with the same success; and it would be an obstinacy and perverseness, attended with very great expence, in any person for the future to dispute it. The Court of Exchequer would undoubtedly Decree in a similar Case, as it has so lately done before. It would, however, be much better for the person who has it to pay to give no occasion; and still more so for him who has it to receive, to have none, to apply to that court for that purpose.

For that it never has before been paid in any Parish or Part of the Kingdom,—as it never yet has, so there is not the least doubt that it ever will be admitted as a sufficient, or indeed any reason why it should not be paid for the future;—so far otherwise, that in the Author's own Case, Arrears of every Species of Agistment Tithe, as before stated and explained,—though no one Article of it had ever before been either paid or demanded in the Parish, were ordered by the Decree
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from the very Day of his Induction to the Living:—In a similar Decree for the same Tithe in the adjacent Parish, the Vicar had Arrears ordered for upwards of Nineteen Years. And in several Decisions in the Court of Exchequer since, the Barons have always, when so set forth by the Plaintiff in his Bill, ordered the Defendants to account from the time of Induction.

For any Person or Parish therefore hereafter to litigate the Right to Agistment Tithe, merely because it has never before been demanded, and refuse Payment of it till required by the Consequences of a Decree either in the Court of Chancery or Exchequer, can serve no other Purpose nor answer any other End, than the exorbitant Emolument of the Gentlemen of the Law, by obliging both the Parson and his Parishioners to empty their own Purfes into those of their Attornies, Solicitors, &c. &c. And several Instances might here be produced, in which such enormous Expences have been incurred by
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the Parishioners in their Litigation of the right to *this very Tithe only*, that after having got themselves safely saddled with a Decree for the Payment of it, not only for a considerable Number of years Past, but for Ever thereafter;—And likewise with their own and the Plaintiff's Costs,—they have found it, at last, a much more difficult, as well as disagreeable, matter to do either, than they were aware of, or had all along been made to expect.

It may therefore perhaps be a piece of information of some use to all who have not already traversed the various Mazes and investigated the intricate—the almost infinite and endless Labyrinths of a Tithe Cause in the Court of Chancery or Exchequer, but who seem at present disposed to involve themselves in the Litigation of the Right to this Tithe; and determined to rest satisfied with no Decree but one of their own, to be acquainted, that the most difficult—the most disagreeable, and by much the most expensive Business of the suit, may—and—unless the Parties
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then either agree betwixt themselves, or give it in Commission to their Solicitors, to settle all matters respecting the Value of Agistment, and consequently the Quantum to be paid for the Tithe of each Species of it, without further Proceedings,—*certainly will be to go through after the Decree, and subsequent to the rights being thereby established,—which subsequent Proceedings—with proper Management by a Solicitor, who happens to have a Disposition for making the most of a good Cause, and a Genius to carry it into Execution, may be protracted much longer after the Decree, than the Cause has been in hand before it.*

For after gaining a Decree as to the Right to this Tithe, should any difference arise betwixt the Party who is to receive and those who have it to pay, as to the Value, &c. &c. and such difference in opinion is not settled either by the Parties themselves or their Solicitors, the only Mode left in that Case of determining it, must be by a Commission from the Court of Chancery or Exchequer, in which ever
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the Bill has been filed—on which Commission each Party must produce *a sufficient Number of Witnesses*,—entirely unconcerned and disinterested in the affair, to be examined upon Oath before proper Commissioners appointed for that purpose, as to the Value of the Agistment of the several objects in dispute, per Week, &c. &c. The Depositions taken upon such Commission, after being engrossed upon Parchment by the Commissioners Clerks, are to be sent up to the Court, and brought before the Master in Chancery or Deputy Remembrancer, who never sits upon such Business but in Term-time; and who, *after hearing Counsel*, or their respective Solicitors, in behalf of each Party, upon such Depositions, is to determine upon the merits of them; and make his report accordingly.

In the Author's own Case, though he had stated the Agistment or Keeping of Sheep in his Bill at Ten Pence per Head per Month;—and upon a Commission, previous to the Hearing, proved it to be

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worth so much by the Evidence of four principal Graziers in the Neighbourhood, all disinterested Persons;—Yet *after the Decree*, the Defendants alledged that the Agistment of such Sheep was not worth more than half so much; and applied to the Court for a Commission to examine Evidences in support of such Allegation. And as they had not done it before the Hearing; and there was therefore only the *ex parte* Evidence in behalf of the Plaintiff, *yet*, before the Court;—and as neither that nor any other Court in Westminster-Hall, ever prevent any of their Suitors from putting themselves to whatever Expence they please, they were indulged in their application,—the Commission was issued and executed, and afterwards went through all the Processes above-mentioned.

About a year after the above Commission was got through, a similar difference arose respecting the Value of the Agistment of the several *Beasts* liable to the Payment of this Tithe—and *that difference*

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was not permitted to be determined any otherwise than by—another Commission.

About a Twelvemonth after the second was finished, and formally settled, it was *discovered by the Defendants Solicitor*, to be not only expedient but absolutely necessary, to have a third upon the Value of the Agistment of *all Horses* liable to pay the same Tithe.

And though the Plaintiff, during the whole Course of this Cause and all the Proceedings relative to it, never once employed or consulted any Attorney in the Country—the very great Abilities—the Integrity and Affiduity of his Solicitor in London, rendering it at all Times and upon all occasions unnecessary—nor had he any concern in any of the Commissions held subsequent to the Decree,—having done every thing on his own Part upon one previous to the Hearing—as foreseeing no advantage to be derived to the Cause of the Defendants, nor fearing any prejudice from any or all of them to his own, and

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therefore put himself to no Expence nor Trouble about them—and though he gained more at the Conclusion, than he demanded at the Commencement of the Suit, yet the Creation and Continuance of so many Commissions; and the Proceedings, previous to and in consequence of them, protracted the final winding up of all matters which had been in Litigation to a much longer Time *after*—than from the filing of the Bill, till the gaining the—Decree.

It has before been observed that all matters, subsequent to the Decree, might always be adjusted amicably by the Parties themselves or their Solicitors;—And it, perhaps, might now be unnecessary to add, how much better it would have been to have had them so settled in the above-mentioned, and that they should be so settled, in every other Case—Why they were not with respect to the Author's own, and why so many Commissions were holden, where one certainly might have been

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been made sufficient, and where none was necessary, the Defendants Solicitor, who was the Adviser of them all, no doubt had his Reasons.*

In order therefore, to avoid the Causes as well as the Consequences of such embarrassing circumstances, so prejudicial, not only to the Peace, but to the Purfes of all Persons involved in them, wherever this Tithe is demanded for the future, though it never has been before,—yet—if the person so demanding it, whether Rector, or Vicar, upon consulting able Counsel, shall be found to rest his Right to it upon the same, or as good grounds, as those who have already had such Right argued

* In two contiguous Parishes in which the Parishioners, at the joint expence of each, litigated the Right to this Tithe, the Value and Mode of Payment of each Species of it, with their respective Vicars, and went through every Stage of every requisite Process, both in the Spiritual Court and Court of Exchequer, they found the Bills of their Attornies, Proctors, Solicitors, &c. &c. amount at last,

In the One, to upwards of £. 1,500

In the Other to ditto £. 1,700

—*quæque ipse miserrima vidi*

Et quorum pars magna fui.

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argued either before the Lord Chancellor or Barons of the Exchequer, and established by a Decree in their favour,—the best, the only way is obvious, viz. Immediately to comply with such Demand, and compound for the payment of it upon such equitable Terms, as a spirit of Peace and Prudence, after the situation of the Country and the peculiar circumstances of the Parish, have been duly considered, will suggest and render reasonable to all Parties.

T H E E N D.