

No. 36. only a few parsonages in Scotland, which may be an encouragement to persons of better spirits and quality in the Ministry.

*Stair, v. 2. p. 538.*

1677. July 25.

HAY *against* DOUGLAS.

No. 37.

What precludes the right of drawing the *ipsa corpora* of the teind-sheaves?

Mr. John Hay pursues Sir James Douglas for contravention of law-burghs, because Sir James his son in his family hindered the pursuer's servants to draw the fourth part of the teind-sheaves of Smithfield, whereunto he hath right, and was recently in use to draw *ipsa corpora*. The defender alleged *non relevat*, unless the pursuer had been in use to draw the teind the year preceding this in question; but he set his fourth part of the teind to the tenants of the ground for a silver-duty, which hath discontinued his drawing, so he could not *brevi manu* thereafter come to draw, even though he had used inhibition, which albeit used in former years, might interrupt the tacit relocation of the tenant, and make him and his master liable for the fifth of the rent, yet would give him no warrant to draw the teind, and therefore the defender's son did no wrong to hinder him.

The Lords found the defence relevant, that the pursuer was recently in possession of drawing, though thereafter he had set the teind for some few years, if only he had used inhibition this very year whereupon the contravention is founded, which would have inferred spuilzie, if he had offered to draw, and was hindered, and consequently contravention; but an inhibition used in a former year, would neither infer spuilzie nor contravention, by hindering the drawing of the teind in subsequent years.

*Stair, v. 2. p. 549.*

1678. July 13.

The LAIRD of MONIMUSK *against* The LAIRD of PITFODDELS.

No. 38.

That the teinds were included, was not inferred by an infeftment having two distinct *reddendos*, one for the stock, and another for the teind, though it bore the teind included.

Monimusk being infeft in the one half of the Barony of Torrie, and Pitfoddels in the other half, the Minister of Nigg pursued for a locality before the commission for plantations against them both, but Pitfoddels producing his infeftment of his half, bearing *cum decimis inclusis*, before the act of annexation 1587, although it bore a distinct *reddendo* for the stock and teind, the commission finding it a point of law, would not determine, but allocated the whole upon Monimusk, reserving him action of relief before the Lords as accords, for his share; whereupon he pursues declarator, that Pitfoddels' rights did not exeeem him from the burden of stipends, though it bore *cum decimis inclusis*, because it was clear by the charter, that before the same, his predecessors had been tacksmen for the teind, and paid twenty-eight bolls of victual therefore, and therefore the charter hath one *reddendo* for the land, and another for the teind, expressly converting the twenty-eight bolls; but *decimæ inclusæ* are only where church-men had right both of stock and teind,

and did indistinctly give a feu of both after the Lateran council, when all feus of teinds were prohibited, and therefore "teinds included" were always given as never having been separated or distinguished from the stock, and so feued out before that council, which, by recent infetment, is ever presumed to have so been, unless the contrary can be proved. The defender alleged, that his right being produced before the act of annexation, the church might have feued both stock and teind, for the Lateran council was never received here; and it appears by the charter, that both stock and teind were always in the same person's hand.

The Lords declared these teinds having a distinct *reddendo*, not to have the privilege of teinds included, albeit feued before the act of annexation, but that they were liable with other teinds for Ministers' stipends.

*Stair, v. 2. p. 632.*

\* \* \* See Fountainhall's report of this case, Sect. 2. *h. t.*

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1679. December 12. The COLLEGE OF ABERDEEN *against* The TOWN.

The College of Aberdeen pursues a spuilzie of teinds against the Town, who alleged that they could be only liable for their accustomed duty, because the same was settled by rentalled teind bolls past memory, and the visitors of the College ordained that duty to be accepted. It was answered, *non relevat*, for rental bolls is but an ancient use of payment, which may be interrupted; but here the defenders have taken tacks for a definite time, which is expired, and the College have used inhibitions.

The Lords repelled the defence, and found the defenders liable for the accustomed duties before the inhibitions, and for the full duty thereafter, but allowed both parties to be heard, whether the duty should be the fifth part of the rent, or the drawn teind till valuation.

*Stair, v. 2. p. 722.*

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1680. November 16. DRUMMOND *against* SIR JOHN DALRYMPLE.

Drummond of Carlowrie against Sir John Dalrymple, anent the tack of the teinds of Kirkliston parish: (The President, and his son Mr. James the clerk, and Mr. Rodorick M'Kenzie the clerk, on his father-in-law the Archbishop of St. Andrews' interest, who had set this new tack to Carlowrie, being removed,) "the Lords *nemine contradicente* found the old tack set for three life-rents, and three nineteen years to Dundas of Newliston, because generally they lived to a great age," bearing these words, "to Newliston and his heirs entering and succeeding;" "could not be conveyed by a voluntary right to assignees, but might legally be conveyed and affected by apprising or adjudication, at the instance either of the apparent heir, or of singular successors."

No. 38.

No. 39.

Teinds being of old in use of payment by rentalled bolls, and thereafter a tack for a definite time, which being expired, the heritors were found liable for the use of payment by the tack till inhibition, and for the full value thereafter, and were not liberated by offering the old rentalled bolls.

No. 40.