

1700. June 15. AIKMAN against CUNNINGHAM.

MR JAMES AIKMAN, minister at Dalmellington, gives in a bill complaining on the clerk to the bills, and Mr David Cunningham advocate. He had presented a bill of horning whereon to charge the said Mr David, as tacksman and possessor of the teinds of Crawford of Camlarg, who had the whole teinds of that parish, for payment of 500 merks and three chalders of victual, as his modified stipend, by his decret in *anno* 1650, and that the clerk had refused to give him horning; and craving the Lords might interpose their authority.—*Answered*, Horning does not pass on general letters at ministers instance, save where they have decreets of locality, as appears by the 13th act of Parl. 1690, discharging general letters; and his decret was only of modification, without any special locality, and so could be no warrant for a summary horning; and the said decret never took effect, but the ministers since have contented themselves with L. 500 for all, there being no victual payable by the tenants in that parish.—*Replied*, Where one had the whole teinds, a decret of modification was the same with a locality, there needing no division where one possessed the whole teinds.—THE LORDS allowed the horning to go out in the general terms of tacksmen, heritors, feuars, &c. leaving the application to the messenger, conform to a subscribed roll to be given him by the charger, and Mr David might suspend the charge on the above-mentioned reasons, only he would be put to consignment, being a minister's stipend, conform to the act of Parliament, unless the charger would discuss upon the bill.

1701. July 2.—MR JAMES AIKMAN, minister at Dalmellington, having charged Mr David Cunningham of Milncraig, advocate, for his stipend, conform to the Lords interlocutor, *supra*, 15th June 1700; and he having suspended, and *alleged* his decret was no decret of locality, but only a modification, and was a part of the bishoprick of Dumblane, and so rescinded by the first act of Parliament restoring bishops in 1662, and that he did not intromit with the teinds of the parish, and so could not be further liable than the proportion of his own lands;—*Answered*, It is *jus tertii* to Milncraig to found on the said act rescissory, and the annulling his decret of locality belongs to the commission for plantation of churches, and is nowise competent to the Session; and as to his right to the teinds, they offered to prove he bruiked either by tacks or prorogations, and having once entered to the possession, he could not *desinere possidere*, without some legal impediment debarring him.—THE LORDS repelled Milncraig's reason of suspension, and found, that being tacksman of the whole teinds of the parish, he must either pay the minister's modified stipend out of them; or if he would not be his chamberlain to lift it, then he ought to renounce the tack, or assign it to the minister, that he might uplift it himself. Mr David offered to assign him to a locality effeiring to his stipend; but the LORDS thought, seeing

No 4.

In a parish where the whole teinds were in the hands of one person, so that no decree of locality appeared necessary, the Lords allowed horning at the instance of the minister to go out in the general terms of tacksmen, heritors, feuars, &c. leaving the application to the messenger, conform to a subscribed roll to be given him by the charger. And the possessor of the teinds having suspended, on the ground that there was no decree of locality, the reasons of suspension were repelled.

- No 4. he declined to be personally liable, the least he could do was to assign him to the first and readiest of the whole subject of the teind till he were paid off his yearly stipend, and if there were any excresce, then Mr David might claim the uplifting of that himself.

Fol. Dic. v. 1. p. 345. Fountainball, v. 2. p. 97. & 117.

1713. February 10.

SIR THOMAS BURNET of Leys, *against* The HERITORS and FREEHOLDERS of the Shire of Kincardine.

No 5.

A charge upon general letters of horning, sustained against the freeholders of a shire, for meeting and stenting themselves, for payment of the fees of their commissioner to the Parliament.

SIR THOMAS BURNET having, upon application to the Lords by bill, obtained a warrant for general letters of horning, to charge the whole freeholders, heritors, and liferenters, within the shire of Kincardine, except noblemen and their vassals, to meet and stent themselves according to their respective valuations, for payment of his fees as their commissioner at the convention of estates, and all the sessions of King William's Parliament; and having charged them, they suspended upon the act 13th, session 2d, Parliament King William, discharging general letters.

THE LORDS found the letters orderly proceeded against the suspenders for meeting and stenting themselves; in respect commissioners' fees are to be raised as the excise, act 35th, Parl. 1. sess. 1. Chas. II. which is a part of the King's revenue, and that is excepted in the statutes discharging general letters.

Fol. Dic. v. 1. p. 346. Forbes, p. 660.

See APPENDIX.