

Peter was not a contravention on the statute or entail, but a rational act, agreeable to the intendment of both.

TEINDS.

1763. *January* . The FEUARS of KERSLAND *against* HAMILTON BLAIR of BLAIR.

CERTAIN heritors in the parish of Dalry having pursued a valuation and sale of their teinds, a question occurred betwixt them and Hamilton Blair of Blair, whether he had right to their teinds as titular or patron. By charters under the Great Seal, as far back as 1605, Mr Blair and his predecessors had right to the lands of Blair, and also “ad advocacionem, donationem, et jus patronatus ecclesiæ parochialis et parochiæ de Dalry; rectoriæ et vicariæ ejusdem, cum mansa ac gleba, domibus, ædificiis, decimis, fructibus, redditibus, et emolumentis eidem spectan. et pertinen. jacen. in dicto baliatu de Cuningham, et vicecomitatu nostro de Ayr, antedict.” &c. The charter contained a *novodamus*, an erection of the whole into one tenandry; and in these clauses, as also in the *tenendas* and *reddendo*, the grant of the patronage of Dalry, with the teinds, was repeated in the same terms. Notwithstanding whereof, the heritors contended, that, by the above, the patronage of Dalry only was granted, and that the words “*cum decimis*” were only exegetical thereof; and, 4th August 1762, “the Lords, as commissioners of teinds, found so, and that Blair had only right to the teinds of the pursuers’ lands *qua* patron.” Hamilton Blair reclaimed: he set forth, that his author was the Earl of Eglinton; that, as to the Earl, he had right to the patronage of Dalry, on the resignation of Mr William Melvil, who had right to it, by Grant from James the Sixth, in these terms:—“Una cum advocacione, donatione, et jure patronatus ecclesiæ parochialis et parochiæ de Dalry, rectoriæ et vicariæ ejusdem;” without any mention of manse, glebe, teinds, fruits, rents, or emoluments thereto belonging. As to the teinds, he had right to them also, by a separate clause in said charter, whereby the King dissolves the tithes, and grants them to the Earl, in these words:—“Ecclesiam de Dalry, rectorias et vicarias ejusdem, cum mansa, gleba, integris fructibus, redditibus, decimisq. garbalibus, et aliis casualitatibus et divoriis quibuscunq. eidem pertinen.” From these clauses, Mr Blair argued, that the first conveyed to the Earl of Eglinton the patronage of Dalry; the second conveyed the teinds of the parish of Dalry; and that the clause in the grant from the Earl, in favours of his predecessors’ in the year 1605, evidently comprehended both, and was compounded of the style of both; first, of the patronage, next, of the teinds. Further, it was clear, that the words, “*eidem spectan. et pertinen.*” referred to the parish of Dalry, not to the patronage, especially as it was described as

situated within the bailiary of Cuninghame and county of Ayr, a description which applied to the parish of Dalry, but could not well apply to the right of patronage, which, being a right incorporeal, could not be said to lie in any bailliwick.

The Lords altered their interlocutor, and found that Hamilton Blair had right to the teinds of the pursuers' lands as titular.

TERCE.

1776. *February 17.* The RELICT of JOHN CAMPBELL *against* GABRIEL CAMPBELL.

THE husband's sasine, says Mr Erskine, *B. 2, tit. 9, § 46*, is the measure of the wife's terce: thus, neither an heritable bond, nor a disposition of lands granted by the husband, if death has prevented him from giving sasine to the creditor or disponee, can hurt the terce; and so the Lords found, "In respect that the deceased John Campbell was not, at the time of his death, denuded of the subject within mentioned by infertment, but only by a title which remained personal; therefore find, that Katharine Waddell, his relict, is entitled to a terce of said subjects, and not to a third part of the price thereof."

See HERITABLE AND MOVEABLE, and JUS MARITI.

THIRLAGE.

1776. *June 25.* SCOTT of BAVELAW *against* CALDERWOOD of POLTON.

THE tenants of Buteland were, by their tacks, thirled to the mill of Bavelaw: this had been the case for a very long period *successive*.

The proprietor of Bavelaw sold the lands of Buteland to Calderwood, with absolute warrandice against all burdens, &c. in common style, but without mention of thirlage, further than assigning to the tacks in which it was contained. In an action against the purchaser and his tenants, for abstracted multures, the Lords found that the thirlage took place during the currency of the present tacks, but assoilyed *quoad ultra*.