

No. 115.

1668. *January 25.*

A. against B.

The Lords, upon debate among themselves, in the case concerning vicarage, thought that yards, for which vicarage was in use to be paid, being turned into infield land, and laboured, the vicar has no right to the teinds of corns growing thereupon, but the same belong to the parson. But they did not decide this point, being only debated *incidenter*.

Dirleton, No. 148. p. 59.

1668. *June 30.* The MINISTER of ELGIN *against* His PARISHIONERS.

No. 116.

In a suit for the vicarage of some yards in Elgin, it was found a sufficient defence, that they never paid any, seeing the teind of lint and hens are only consuetudinary. And as to calves, wool, milk, lambs, none of these were here produced.

The Minister of Elgin pursues his Parishioners for the vicarage of some yards in Elgin, which belonged of old to the Canons of the cathedral kirk of Elgin, and were by them feued to the defenders; who alleged, Absolvitor, because the yards, being a part of the Canons' portion, and in effect their glebes, had in no time past ever paid vicarage, which is consuetudinary and local, both as to the payment and the kinds; for, in some places, teind lint and hens are paid, and in others not; but the ordinary vicarage being stirks, wool, milk, and lamb, there are none of these to be had in these yards. It was answered, That no prescription could take away teinds, upon the forbearance of demanding it by beneficed persons, who are but administrators, and cannot dilapidate; otherwise, all benefices might be destroyed. *2dly*, Lands that have been always ploughed, and so paid parsonage, and becoming grass, are liable for vicarage, albeit it cannot be proved that ever they paid any before.

The Lords found the defense relevant, unless the pursuer could prove that vicarage has been paid out of these, or out of any of the Canons' portions of this kirk.

Fol. Dic. v. 2. p. 438. Stair, v. 1. p. 546.

No. 117.

1674. *January 14.* JOHNSTON *against* STEWART.

Vicarage teinds *debentur parochio* as well as parsonage teind.

Stair.

* * This case is No. 33. p. 15639.