

1671. November 24.

URQUHART Minister *against* The LAIRD of Friergrees.

No 9.

In an action at the instance of a prelate, against intruders with teind, for payment of the old duty; this exception found relevant, that they had paid their master, who let stock and teind together undisguished.

URQUHART, minister at the kirk of _____, pursuing his parishioners for the vicarage tithes, alleged intromitted with by them before the year of God 1647:—It was *alleged* for the defenders, That they were tenants to their masters to whom they had made payment of a joint duty for stock and teind.—It was *replied*, That the minister being titular of the vicarage, consisting in particular species, they were of a different nature from parsonage teinds, which were only *decima pars fructuum crescentium*, and so might be set by the heritors with the stock, who receiving a joint duty for both, were only liable to the titular; but it was not so in vicarage teinds, whereof an heritor could give no valid discharge, having no pretence of right.

THE LORDS did assoilzie the tenants; and found, that a tack being set to them, they were in *bona fide* to make payment, unless the minister had intimated his right, and put them in *mala fide*; and thought that it would be of a dangerous consequence after 20 years silence, to question tenants for payment to their masters, they not being obliged to know any other person's right.

Fol. Dic. v. 1. p. 112. Gosford, MS. p. 204.

No 10.

Payment in consequence of an informal apprising, obtained before process, held to be *bona fide*.

1677. November 23.

BOYD and GRAHAME *against* MALLOCH.

BOYD and GRAHAME having apprised the Lady Bairfoord's liferent, pursue Robert Malloch, as having right to a prior apprising led by Agnes Brunton, as being satisfied by his and his author's intromission. It was *alleged* for the pursuers, That Brunton's apprisings being upon two sums, the decret for the greatest was turned into a libel before the apprising; and so it was without warrant and null, not only as to that sum, but as to the whole; for apprisings have ever been reduced upon any informalities, or the defect of any of the sums appraised for. It was *answered*, That as to the exorbitant advantages of apprisings, by expiring of the legal, and carrying unproportionable rights, they have been strictly considered by the Lords, and easily reduced, but not as to the just and equal effects for recovering payment of the sums; and here the appriser's possession, and satisfaction, is before any process by these pursuers, and is payment obtained *bona fide*, which is sustained with any colourable title.

Which the Lords found relevant, the defender instantly astructing the verity of the sums appraised for.

Stair, v. 2. p. 565.