

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,