

and did indistinctly give a feu of both after the Lateran council, when all feus of teinds were prohibited, and therefore "teinds included" were always given as never having been separated or distinguished from the stock, and so feued out before that council, which, by recent infetment, is ever presumed to have so been, unless the contrary can be proved. The defender alleged, that his right being produced before the act of annexation, the church might have feued both stock and teind, for the Lateran council was never received here; and it appears by the charter, that both stock and teind were always in the same person's hand.

The Lords declared these teinds having a distinct *reddendo*, not to have the privilege of teinds included, albeit feued before the act of annexation, but that they were liable with other teinds for Ministers' stipends.

Stair, v. 2. p. 632.

* * * See Fountainhall's report of this case, Sect. 2. *h. t.*

1679. December 12. The COLLEGE OF ABERDEEN against The TOWN.

The College of Aberdeen pursues a spuilzie of teinds against the Town, who alleged that they could be only liable for their accustomed duty, because the same was settled by rentalled teind bolls past memory, and the visitors of the College ordained that duty to be accepted. It was answered, *non relevat*, for rental bolls is but an ancient use of payment, which may be interrupted; but here the defenders have taken tacks for a definite time, which is expired, and the College have used inhibitions.

The Lords repelled the defence, and found the defenders liable for the accustomed duties before the inhibitions, and for the full duty thereafter, but allowed both parties to be heard, whether the duty should be the fifth part of the rent, or the drawn teind till valuation.

Stair, v. 2. p. 722.

1680. November 16. DRUMMOND against SIR JOHN DALRYMPLE.

Drummond of Carlowrie against Sir John Dalrymple, anent the tack of the teinds of Kirkliston parish: (The President, and his son Mr. James the clerk, and Mr. Rodorick M'Kenzie the clerk, on his father-in-law the Archbishop of St. Andrews' interest, who had set this new tack to Carlowrie, being removed,) "the Lords *nemine contradicente* found the old tack set for three life-rents, and three nineteen years to Dundas of Newliston, because generally they lived to a great age," bearing these words, "to Newliston and his heirs entering and succeeding;" "could not be conveyed by a voluntary right to assignees, but might legally be conveyed and affected by apprising or adjudication, at the instance either of the apparent heir, or of singular successors."

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Teinds being of old in use of payment by rentalled bolls, and thereafter a tack for a definite time, which being expired, the heritors were found liable for the use of payment by the tack till inhibition, and for the full value thereafter, and were not liberated by offering the old rentalled bolls.

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