

No. 40.

1681. *January 22.*—In the cause Sir John Dalrymple, and George Young his assignee, (16th November, 1680,) “ the Lords found in vicarage teinds, such as calves, lambs, &c. where they are fewer than ten and above five, because a half lamb cannot be paid *salva rei substantia*, and without destruction of the animal, that the value of the half *succedit loco rei* as *surrogatum*, and is due.” See the same decision, 19th January, 1611, Baillie, (See APPENDIX.) Sir G. Lockhart contended it was downright nonsense, and contrary to law, to decern for the value, where *ipsa corpora sine rei interitu* could not be paid, and that nothing was due in that case at all.

Fol. Dic. v. 2. p. 439. Fountainhall, v. 1. p. 115, 127.

1683. *March.* BISHOP OF THE ISLES *against* STEWART of ASCOG.

No. 41.
Conversion of
rental-bolls
into money-
duty.

In a reduction at the instance of the Bishop of the Isles, of a tack of teinds granted by his predecessor Mr. John Stewart of Ascog, upon these grounds :

1st, The same was set for money-duty, whereas the teind was payable in rental bolls, which was a dilapidation of the benefice, contrary to the act of Parliament :

2^d, The tack was granted during the standing of another tack for years then to run, when the setter was about to be translated to another Bishoprick :

Answered : It appears by a tack set in the year 1607, a little after the act of Parliament, that the *ipsa corpora* of the teinds were set to the tacksmen, which argues, that no rental bolls were in use to be paid for these teinds, especially there being no rental of the Bishoprick produced, wherein rental bolls are inserted as the teind-duty, albeit the tacksmen have been in use to receive bolls for the teind-duty from the heritors : 2^d, The taking of the new tack was a renunciation of the former, which was lawful to any body.

The Lords having examined the heritors of the Isle of Bute, who declared, that the duty in use to be paid for the teinds of the whole Isle, to the Bishop and Ministers, was such a number of bolls, whereof the Bishop had a fourth ; the Lords found, That the duty *quoad* the Bishop's part, was in the case of rental bolls, and could not be converted to money, and therefore found the tack null ; although, since the year 1607, the tack-duty had always been money, and not victual ; and that the present silver-duty was twice as much as used to be paid to former Bishops, and so was not a diminution, but a raising of the rental.

Harcarse, No. 964. p. 274.

1683. *March.* EARL of TWEDDALE *against* TENANTS of PINKIE.

No. 42.

My Lord Tweddale having set the lands of Pinkie, stock and teind, for one duty, the teind being drawn by the Duke of Lauderdale ; and the tenants being

pursued by Tweeddale for their rents, they craved allowance of a fourth part of the tack-duty for the drawn teind. No. 42.

The Lords finding the tack-duty was but reasonable, they modified only a fifth part thereof for the drawn teind.

Harcarse, No. 965. p. 274.

1684. February.

ARCHIBALD FRIERLAND *against* The LAIRD of ORBISTOUN.

Found, That a tack of teinds let by a minister for his life-time, and five years after, without consent of the patron, did subsist for three years, and was only null *quoad excessum*. And another tack of the teinds granted to the patron, being questioned as simoniacal, and quarrellable by the next incumbent, the Lords found, that, by the act 1. Parl. 21. James VI. and act 9. Parl. 1. Charles II. patrons are allowed to transact with their Minister for a tack of the teinds, reserving a sufficient allowance the to Minister, which, by law, is not simony. No. 43.

Harcarse, No. 966. p. 274.

1684. December 4. BULLO, Minister of Stobo, *against* PARISHIONERS.

In a pursuit at the instance of ——— Bullo, Minister of Stobo, against his Parishioners, for the parsonage-teind of their lands, No. 44.

It was alleged for the defenders: That though the pursuer be presented to the parsonage, he can have no further claim than to his stipend, which is modified by a decree of the Commission.

Answered: A parson has oft-times a modified stipend when the teinds of his parish are under tack, and when the tacks are out, he has right to the teinds. Besides, it is *jus tertii* to the defenders, who have no tacks of their own teinds, to make such an exception against the Minister's title.

The Lords sustained the answer, and decerned for the teinds.

Fol. Dic. v. 2. p. 439. Harcarse, No. 692. p. 195.

1685. March 1.

MR. ARCHIBALD GRAHAM, Bishop of the Isles, *against* JOHN CHARTERIS, &c.

Mr. Archibald Graham, Bishop of the Isles, having charged John Charteris, George Wedderburn, and other merchants of Edinburgh, for £.4 Scots, as the price of the teind for each last of herring taken in the seas adjacent to his diocese, they suspended, on this ground, That he was never in possession of any such teind-duty from them, who are not the slayers and first takers, but only the buyers at

No. 45.

A churchman pursued the buyers of salmon caught upon the coast of his district