

1684. *February 6.* COLONEL WHITEFOORD *against* The BISHOP of GALLOWAY'S VASSALS.

Colonel Whitefoord pursuing several vassals of the Bishopric of Galloway, (whereof his father was bishop in 1630,) for payment of teind-duties, out of the lands now possessed by them;—ALLEGED,—Teinds are not *debita fundi*; and unless he offer to prove that they represent, by some passive title, the persons who possessed these lands, during the years he claims, he cannot convene them. ANSWERED,—It is presumed their father possessed the teinds, unless they prove that another did draw these teinds, or had a right thereto.

The Lords, on Pitmedden's report, found the Colonel behoved to condescend and prove that the persons whom they represent did specifically possess these lands and uplift the teinds, the years libelled. *Vol. I. Page 267.*

1684. *February 6.* LORD MELVILLE *against* JAMES WILLIAMSON.

At the Commission for Plantation of Kirks, my Lord Melvil reducing a decret of augmentation obtained against him by Mr James Williamson, minister at Kirkcaldy, of 100 merks yearly, and converting oats to bear; the Lords sustained his decret, and assoilyed from the reduction; because, though there was a new church erected at Abbotshall, and taken off Kirkcaldy, yet that could not prejudice the *ecclesia matrix* from which it was dismembered, especially seeing Melvil paid no communion elements to the kirk of Abbotshall.

I heard it questioned at this time, if a minister be seeking an augmentation who has not full eight chalders of victual, or 800 merks of money, and there be no free teinds unexhausted in the parish, but only *decimæ inclusæ*; whether will they be burdened, or will the minister be sent to the *remedium extraordinarium* of affecting free unprivileged teinds *non inclusæ* of the adjacent parish, as the minister of North Leith got off the West Kirk parish. *Vide infra, 12th March 1684, the case of Tulliallan and Culross. Vol. I. Page 267.*

1684. *February 8.* JAMES CAITHNESS *against* COLONEL BORTHWICK.

Mr James Caithness, writer, pursuing Colonel Borthwick, on a debt wherein he was bound with Scott of Ardross, and the Colonel adducing strong presumptions that this was paid with the debtor Ardross's means, and the bond retired with a blank assignation, which falling in Mr James's hands, he had fraudulently filled up his own name therein:

The Lords, on Harcou's report, *ex officio*, ordained any witnesses the Colonel should condescend on to be examined, what they know of the trust or manner of retiring that debt. For though, of old, it was a decantated maxim, that my written bond cannot be taken from me *nisi scripto vel juramento*; yet, where there is suspicion of contrivance or fraud, the Lords do, by witnesses, expiscate the truth; and secret conveyances would never be discovered if the Lords