

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

took not this course ; and seldom any loses a just cause by this method of procedure.

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1684. The TOWN of BURNTISLAND *against* The TOWN of KIRKCALDY.

January 17.—THE Burghs of Easter and Wester Kinghorn, *alias* Bruntisland, give in a libel to the Privy Council, against the Town of Kirkcaldy, craving to have them prohibited from keeping any ferry or passage boats between their Town and Leith, seeing it is no ways a secure port for taking in men and horses, nor are they furnished with so good boats as the pursuers ; but the king's subjects are oft in hazard, and many times drowned ; and that ferries are *juris publici* and *inter regalia* ; and that Craig, *feud. lib. 1, dieg. ult.* reckons *angariæ seu parangariæ præstationes navium inter regalia* ; and if the king had his militia forces to transport in haste, Kirkcaldy could not serve him, but only they ; *et jus portûs non cuivis competit.*

ANSWERED,—That Kirkcaldy is a burgh-royal, and by its situation lies on the sea, and so naturally accommodated to serve passengers ; and the lieges are best judges of their own conveniences, and ought not to be restricted ; and the more passages the better. And for goods and merchandise, if they be landed at Bruntisland or Kinghorn, no cart can well draw them up that steep path and brae near Kinghorn, for they dip so deep in the sand. And they have no other way to serve the east parts of Fife if Kirkcaldy were prohibited. And though the 20th Act of Parliament, 3d James III., and the other Acts relative, only name Kinghorn, and not Kirkcaldy, (this would also exclude Bruntisland, though it be also called Wester Kinghorn, and all the other sea towns there ;) yet these acts do not contain a full enumeration of all our ferries ; neither can it exclude others who have been in possession, near prescription, of boats not only for transporting and carrying goods, (which is common to all burghs,) but also of ferry-boats for passengers, (though they have not convenience yet for landing horses, but they are mending their harbour ;) and that their charters from the king bear the right of a free port ; and Bruntisland, at a conference or meeting, offered to allow them one or two boats.

The Privy Council, finding this a case merely civil, and depending on a declarator, referred them to the Session, as the Judge Ordinary for deciding such cases ; but recommended it to be summarily discussed there. *Vide 8th Feb. 1684.*

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February 8.—The debate between Bruntisland and Kirkcaldy anent the right of Ferry-boats, mentioned 17th January, was reported by Carse ; and the Lords being unclear, they nominated the President, Blair, and Carse, to call both parties before them, and study to settle and accommodate the difference betwixt them. But they not having prevailed, the parties at last submitted to Sir John Cunningham : who by his decreet-arbitral restricted Kirkcaldy to four boats, and Dysart to two ; Bruntisland and Kinghorn having as many as they please. *Quær.* how far these two burghs may quarrel this decreet, it being only their Magistrates who submitted, who cannot alienate the Town's privileges.

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