

a right to teinds if he have it not before, &c. "The Lords found the defence founded on the rental, tack, and prorogation thereof made to the defender, with the exception from the clause of warrandice, contained in the disposition made by the Earl of Winton to Hopetoun, and that the defender has been in use to pay, and the Earl of Winton to receive, the duty contained in the rental and tack, relevant to be proved by the defender."

No. 105.

Fountainhall, v. 1. p. 8.

1684. March 11. TULLIALLAN against CULROSS.

In the debate between the two kirks of Tulliallan and Culross, whether *decime inclusa* could be burdened to make up a Minister's stipend, where there was no free teinds in the parish *aliunde*; the Lords ordained the allocation and mortification to be produced, and declared they would hear the point in their own presence. Sir George Lockhart affirmed they might as well burden the stock, for such teinds were in effect stock. But it may be queried, if, at least the tenth penny mail paid out of these *decime inclusa* by the 29th act Parl. 1587, annexing Kirklands to the Crown, Art. 16th, may not be burdened with Ministers' stipends; See 10th January, 1662, Renton against Ker, No. 20. p. 15632.

No. 106.

Fountainhall, v. 1. p. 281.

1708. January 20. MAJOR CHIESLY against SIR ALEXANDER BRAND.

The deceased Major Chiesly having sold his lands of Dalry to Sir Alexander Brand, and having submitted to the deceased Duke of Argyle what right he should accept of for the teinds of the lands; his Lordship, by his decreet-arbitral, decreed, That after the tack now running, let by the Lord Bellenden, either a new one should be procured from his heirs-male for three nineteen years, or a prorogation from the commission of the kirk for the same term of years. When the rights came to be searched, they found the tack expired, which was then thought current, and no heir-male could be condescended on, so the right could not be completed in the precise specific terms of the decreet-arbitral; therefore this method was fallen on. They belonged to the Bishop of Edinburgh during the standing of Episcopacy, and since its abolition to the Queen, from whom a tack is obtained to the said Sir Alexander Brand for four nineteen years; and this being offered as better than what he was to have got by the decreet-arbitral, he objected, *Imo*, That seeing the decreet-arbitral was now found imprestable, et nemo tenetur ad impossibile, res nunc devenit in eum casum, that the minute of sale betwixt the Major and him must be the rule, by which he is to give the same price, viz. twenty years purchase for the teind, that he did for the stock; and seeing

No. 107.

Nature of a
tack of
teinds.