

otherwise, he may evacuate my teinds, and make them wholly unprofitable, (though it is not to be presumed malice will extend so far as to persuade a man to cast his own interest waste, of purpose to defraud the titular of his teind); heritors having the free use and disposal of their ground, yet so as not to wrong third parties; for *quoad* the teind, he is but a tenant; and a tenant is bound to labour, that his master may have a hypothec in the fruits of his ground for his security; 27th February, 1623, Randifurd, No. 136. p. 15256.; which agrees with the Roman law, L. 25. § 3. D. Locat. And thus, ground converted into a garden was thereby found teind free, when it was evident that it was *principaliter* done for improvement; 9th June, 1676, Burnet against Gib, No. 35. p. 15640. This was ordained to be farther heard.

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1695. January 21.—The Lords now decided the point, and found Sir William, as titular, could claim the parsonage-teinds of no more but what was laboured and tilled, and that he could not hinder a proprietor to turn arable ground into grass; but he had an easy remedy, by pursuing a valuation, which, by the act of Parliament in 1633, is fixed at the 5th boll; and if all be vicarage, then the parsonage great teinds are mortified out of these.—See Stair, Tit. TEINDS. But this puts titulars, before valuation, to great trouble, to liquidate how much each year was in corns and how much was left in grass.

Fol. Dic. v. 2. p. 439. Fountainhall, v. 1. p. 672. & 702.

1698. June 29.

JOHN CALLANDER, Merchant in Edinburgh, *against* CARRUTHERS of Holmends.

The deceased Holmends having married John Callander's daughter, for his second wife, by a bond of provision, in 1689, is obliged to infest her in the life-rent of some rooms for her jointure, to belong to her during her life-time, after and from the first term of Whitsunday or Martinmas after his decease; which is interpreted to make her entry, not at the first term after the dissolution of the marriage, by his death, but the second. And accordingly, he being the first deceiver, leaving only one daughter of this marriage, there is process raised by the said John, as her assignee, against this Holmends, on these three heads; *1mo*, To pay her aliment, as the Lords should modify it, ay till her jointure should commence; *2do*, To pay the aliment of his sister, by-gone, and in time coming; *3tio*, To pay her the teinds of her jointure-lands, though not expressly provided, because she is burdened with the Minister's stipend, which, naturally affecting teinds, imports she must have right thereto. Alleged for Holmends, the defender, That he could not be liable to entertain the relict any longer than to the first term immediately after her husband's decease; because that practice was introduced by no law, but only custom, which could not be extended: And though it was pre-

No. 48.
Teinds a distinct subject, and not understood to be comprehended under a right to lands.

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tended there was the same parity of reason for both, that the heir is bound to aliment her, ay till her own life-rent provision beginn, yet the true reason why he is obliged to entertain her to the next term is, because it is reputed still to be the husband's family, as if the *paterfamilias* were yet alive, and the servants cannot be sooner dismissed; which reason does not militate after that term. As to the 2d article, The daughter can have no modification of an aliment, since he offered to take her home to his own house, and now *de facto* she stays with him; and as for her aliment before, it must be presumed to have been *ex pietate parentali*. To the 3d, Opposes the obligation, where there is no mention of the teind, which being no *feudum separatum*, is not carried under the denomination of lands. Replied for the pursuer, That *quoad* those terms intervening between her husband's death and the commencement of her jointure, it must be understood as if she were left to the legal provision of a terce, to which she restricts it. And to the 2d, There can be no presumption of a donation here; for the mother's jointure was meant, and her assignee intimated his intention to claim it, by raising this process; which sufficiently takes off the foresaid presumption. And *quoad* the 3d, Though paction alters law, in some cases, yet it is plain here the parties meant to give her the subject out of which stipends are payable, seeing they burden her with the same. The Lords found the heir no farther liable to aliment the widow but to the next term; and would allow no aliment against the brother, but from the time he was interpellated by the citation in this process for aliment; and found all preceding furnished *ex pietate*, seeing the mother and grandfather are liable *in suo ordine*, as well as the brother; and assoilzied him since his offer to take her home: And found it has been the design of parties, that she should have right to the teinds of her jointure-lands, though not expressly mentioned, in respect of the quality and burden imposed upon her by the clause of the right, obliging her to pay the Minister's stipend.

Fol. Dic. v. 2. p. 433: Fountainhall, v. 2. p. 8.

1708. January 8.

The REPRESENTATIVES of MAJOR CHIESLY, of Dalry, against SIR ALEXANDER BRAND.

No. 49.

Nature of a
tack of teinds.

By a minute of sale of the lands of Dalry betwixt Major Ghiesly, and Sir Alexander Brand, the Major being obliged to give Sir Alexander a sufficient right to stock and teind, and Sir Alexander having afterward questioned the Major's right to the teinds as not sufficient; both parties in May 1700 submitted to the Duke of Argyle what right the Major should give of the teinds sold to Sir Alexander. The arbiter considering that the Major had only right by progress to a tack of the teinds of Dalry, granted by the commendator of Holyrood House in September 1598, to James Ballenden of Burghtoun, during the life time of himself and heirs therein mentioned, and nineteen years after the decease of the last of