

1707. *November 28.*The MINISTER and KIRK-SESSION OF NORTH LEITH *against* ANDREW SKEEN,
GORDON, and Others.

No. 122.

Vicarage
teind fish.

The teind fish of Leith and Newhaven belonging originally to the Abbacy of Holyroodhouse, which right the parishioners of North Leith purchased from Lord Holyroodhouse to be a fund of stipend to the Minister, there being little arable ground, and so few or no predial teinds in the parish; according to which they had been in possession for many years; but a ship coming from Aberdeen with cod and ling, and other fishes, which they designed to export to the Streights, but for the better curing of them did unload them at Leith; and being pursued by William Williamson, the Minister's tacksman of these vicarage-teinds, to pay twenty shillings Scot for every last of the herrings, and the twentieth fish of all other kind of fishes, agreeable to use and wont, and conform to sundry decreets; alleged for the merchants, That they did not controvert this teind of whatever was taken by the fishers of Leith and Newhaven, which was all at first designed, these dwelling within the bounds of the Abbot's right, nor would debate his having the teind of what fishes were brought from other places to Leith for sale or consumption there; but what they pleaded was, That fishes only brought to Leith for exportation, could never be liable; for, *1mo*, They had first paid teind in the Lewis, and other places where they were taken, and so could not be teinded a second time; *2do*, Such goods to be exported are free of custom and excise, *et multo magis* of this teind, which will be a great impediment and burden upon trade and foreign-commerce. Answered, They claimed no teind of fishes, but such as were debarked, unloaded, and cellared in Leith, and so they had it in their power to free themselves of this teind; for though they came to Leith-road, yet if they went abroad without unloading them, the Minister had no claim, and it was no novelty to pay twice; for herrings taken on the coast of Fife, though teinded there, yet if brought to Dunbar, or other places on the Lothian-side, pay again; and this was proponed in the other decreets, and formerly repelled, and so *res judicata*; as appears by Stair, 10th February, 1666, Minister of North Leith against Merchants in Edinburgh, importers of fish, No. 146. p. 10890. See also Mr. Forbes on church-lands and teinds, page 350. that tithes are exacted by the very heritors of the ground where boats happen to land, sometimes the whole, and in other places the half teind only; and this is a considerable part of minister's stipend, and cannot be taken from him until an equivalent be settled upon him out of another fund; and how shall it be known what you have a mind to export, and what to sell, and you may suffer them to lie several months under the pretence of waiting an occasion to export them, and so defraud the Minister of his dues; and the offer of his having a key of the cellars, is a remedy neither proper nor secure for the minister. Some of the Lords thought this would be an intolerable embargo upon trade, and the decreets were not *res judicata*, being *inter alios*, and that point of fishes to be exported was not then started; and though it be now set only at 700 merks, yet if trade flourish, it may extend to 7000 merks *per annum*; therefore they ordained it to be heard in their own presence.

1708. *January 20.*—The case mentioned 28th November last, the Minister of North-Leith against the Aberdeen Merchants, being this day heard in presence, it was contended, that the minister's possession by his decreets, &c. was, as to fishes taken by the Leith or Newhaven boats, or as to fishes imported into Leith from other parts, in order for consumption, and to serve the country; but where they were taken elsewhere, with a design to export them abroad, such a servitude would be a grievance on trade, and, if allowed, would amount to many stipends, instead of one. Answered, These words in their rights, giving the Minister the half-teind of all the fishes of Leith and Newhaven, were not taxative and restrictive, but only exegetic and demonstrative; and, to take off the pretence of a grievous burden, they offered to quit it to any that would secure the church in a stock of £.50 Sterling a year, that the kirk may not be any longer called greedy. It being put to the vote, Exeem such fishes landed at Leith as are to be exported again, or not? the Lords were equally divided, and the President, by his vote, found them not liable to the Minister in any teind; which did cut off a great branch of that kirk's stipend. But the President thought these double burdens of teinds on exported fishes was too great a clog and discouragement on foreign trade.

Fountainhall, v. 2. p. 397. & 421.

* * See Forbes's report of this case, No. 50. p. 15652.

1787. *November 15.* ROBERT WILLIAMSON *against* ROBERT LUNAN.

The lands of Lethindy-bank had formerly been the uncultivated part of a large farm, from which they were afterwards disjoined, and brought under tillage. They were then granted in lease to Robert Lunan; and Mr. Williamson, the parish Minister, having been in use to levy, in the parish, the vicarage-tithe, particularly that of lint, claimed the ordinary proportion of this article raised on those lands.

Robert Lunan objected to this, and

Pleaded: Vicarage-tithes are only due from such particular farms, and out of such articles, as have been rendered subject to that burden by immemorial and inveterate usage. In the present case, then, the vicarage of lint cannot be due; because, till very lately, the farm possessed by the defender never was in a situation to produce any thing but grass.

Answered: The right of levying vicarage-tithes is no doubt entirely consuetudinary; and if it could be alleged, that none had been levied out of certain lands, or even that, with regard to some articles, the tenants of a certain farm had been uniformly exempted, a valid exception would thence arise, although by far the greatest part of the parish had been liable to this burden in its fullest extent. But where, throughout a whole parish, the vicarage-tithe has been uniformly levied

No. 123.

The vicarage of lint due, if in use to be paid out of the farm.