

No. 51. *ab initio*, it could not emerge, or become due by the subsequent grant of a tack without any new law ; besides, the tacksman's possession is her Majesty's possession. Again, there is a manifest disparity betwixt teinds of the Queen's property when the annuity was imposed, which could not be burdened with it, and teinds which, being once liable to annuity, fell afterwards in the sovereign's hands by forfeiture, bastardy, *ultimus hæres*, &c. And yet even in these, the property would absorb the inferior right of annuity. *2do*, It is not material to allege, that the Queen's teinds bear a share of publick burdens ; for the annuity and supply are differently counted for in Exchequer, and differently applied. The supply is not granted to the Queen to be disposed of as the patrimony of the Crown, but for certain special public uses ; upon which account her Majesty's proper lands bear a proportion with the rest of the shire.

The Lords found, that the King having right to annuities, and to the suspender's teinds, the time of the acts of Parliament 1633 ; the annuity could not burden these teinds ; notwithstanding that the King had right to the annuities *jure coronæ*, and to the said teinds *jure privato*.

Forbes. p. 239.

1721. *November 22.*

HAY of Drumelzier against SIR JOHN HOME of Blackadder.

No. 52.

Parsonage teind may be purchased by the heritor, as well while they are in tack as where they are in the possession of the patron. See APPENDIX.

Fol. Dic. v. 2. p. 443.

1724. *February 28.*

The MINISTER and KIRK SESSION of NORTH LEITH against JAMES LAW of Hillhousefield.

No. 53.

Teind found payable at the rate of the highest fiars.

The pursuers, as having right to the teinds of Hillhousefield, which, by a decree of valuation, in the year 1631, were ascertained to seventeen bolls and a half of bear, insisted against Mr. Law for payment of the teind-duty since the year 1704, at the rate of the highest fiars.

It was pleaded for the defender: *1mo*, That though *per errorem* he had paid those teinds till the year 1704, yet, having then discovered that he had an heritable right to them, upon which he was infest, and which was intimated to the pursuers, he refused to make any further payments ; and they had not, since that time till now, claimed these teinds ; he was therefore entitled to the benefit of a possessory judgment.

2do, Though he were liable for the teinds, yet they could not be rated at the highest, but at the Commissary or second fiars ; which are looked upon as the standing rule for Ministers' stipends, and teinds payable in victuals.

It was answered, to the 1st, That the defender's infesment was in virtue of a precept of *clare constat* from Heriot's Hospital, in which, of course, the teinds were thrown in with the lands; and his plea upon this right could mean no more than to delay the Minister and Kirk Session, and put them to the expense of a reduction. And further it was contended, That the privilege of a possessory judgment was not competent in an action for teinds; Stair's Institutions, Lib. 4. Tit. 17. § 3, which holds in a more particular manner when Ministers have an interest.

To the 2^d, it was answered, That there was no law which made the Commissary fiars the rule either for Ministers' stipends or any other titulars' teinds; and further, that, by the custom of the parish of North Leith, and the neighbouring parishes, the highest fiars were payable to the Ministers for their victual.

The Lords repelled the defences, and decerned for payment at the highest fiars.

Act. Ja. Graham, sen.

Alt. Jo. Spottiswood.

Edgar, p. 44.

No. 53.

1730. February 1.

SOMERVELL of Kennox, against STEWART of Kirkwood.]

The act 1693 provides, "That the teinds of lands belonging in property to the patron, titular, or tacksman, shall be free of any allocation to the Minister, if there be free teinds beside." In a process of sale of teinds, at the heritor's instance against a tacksman who had a tack comprehending the teinds both of the pursuer's lands and of his own, and whereof the tack-duty was totally allocated to the Minister, the tacksman insisted, upon the above act, to have the whole tack-duty laid over upon the pursuer, in consequence of which he would have the teinds of his own lands free, without paying any tack-duty therefor. It was answered, 1^{mo}, The act of Parliament gives a power of allocation to the titular or tacksman, but gives no power to alter the locality, being once fixed by decree; 2^{do}, The tack-duty is not the teind of the tacksman's own lands, but what he has covenanted to pay for the teind, which, in all events, he must pay either to the titular or to the Minister. The Lords found, That the defender cannot exempt his lands of any part of the tack-duty. See APPENDIX.

Fol. Dic. v. 2. p. 442.

No. 54.

1781. February. EARL of GALLOWAY against AGNEW.

In a process of locality, the Lords found, That the Earl of Galloway having right to the whole teinds of the parish of Kirkcubbin, in virtue thereof could exempt

No. 55.