

It was answered, to the 1<sup>st</sup>, 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<sup>d</sup>, 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.

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<sup>mo</sup>, 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<sup>do</sup>, 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.

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

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