

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.

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.

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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- No. 55. his own lands, even from that part of the stipend which had been immemorially paid out of them to the Minister. This was found, *1mo*, Because the act 23. Parl. 1693, makes no distinction, but allows, in general, patrons to exempt the teinds of their own lands; *2do*, From the nature of the thing, because, when a patron or titular has right to the whole teinds of a parish, it is equal to him how the stipend be paid, whether out of the teind of his own or other people's lands, for still he draws the remainder. An use of payment of this kind is as much *voluntatis* with respect to the titular, as it is with respect to the proprietor to lay the burden of the Minister's stipend, sometimes upon one farm, sometimes upon another. See APPENDIX.

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

- No. 56. 1736. December 16. GREENOCK against GREENOCK.
Teinds fall to the heir of line, not to the heir of conquest.

C. Home.

* * This case is No. 8. p. 5612. *voce* HERITAGE AND CONQUEST.

- No. 57. 1738. February 1. DUKE of DOUGLAS against ELLIOT of Woolie.
A titular of the teinds of a whole parish having given to an heritor an heritable right to the teinds of his own lands, to be held of the titular himself, for payment of 100 merks yearly of teind or feu-duty, which was pretty near the sum that fell to be laid upon these lands in a proportional allocation of the stipend; in a process of locality, the Lords refused to allocate any part of the stipend upon this heritor, in regard it was implied in the transaction, that he was to have right to his own teinds, absolutely free from the burden of any part of the stipend; that it must be presumed he paid an adequate price for the same, and it would be making him pay a price for nothing, if, the next day, these teinds could be evicted from him, and allocated to the Minister. See APPENDIX.

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

- No. 58. 1738. June 22. SINCLAIR of Freswick against GROAT of Wares.
Rate of teind.
—Deductions.
In a process at a titular's instance for the teinds of bygone years, who insisted for a fifth part of the rent the lands were worth for the respective years, and that, without regard to the rent payable by the tenant to the heritor, who, on account of *grassums*, or extraordinary services, as was said to be the fact in this case, might accept of less than the lands were worth, he might be allowed a proof of the true