

No. 19.

1634. July 11. EARL of LOTHIAN *against* VASSAL of JEDBURGH.

What is sufficient to put parties *in mala fide* to pay teind, after the person to whom they had been formerly due had been denuded of his right?

Spottiswood.

* * This case is No. 1. p. 14087. *voce* RIGHT IN SECURITY.

No. 20.

Whether annuity of teind be due by one infeft *cum decimis inclusis*?

1662. January 10. LAIRD of RENTON *against* MR. MARK KER.

The Laird of Renton having obtained decret against Mr. Mark Ker for the teinds of Fernieside, he suspends, on this reason, That he ought to have retention of the annuity of the teind which he had paid, and whereto he had right. The charger answered, that there was no annuity due out of their teinds, because he was infeft *cum decimis inclusis*, which are not liable for annuity. The suspender answered, That there was no exception in the act of Parliament 1623 of teinds included.

The Lords recommended the matter to be settled, this being a leading case, in relation to the annuity of teinds included; but they thought that annuity was not due of teinds included; because such lands never having had the teinds drawn, there is nothing to constitute teind due for them, either by law, paction, or possession; and so where no teind is, there can be no annuity: And also, because the ground granting annuity to the King, was because the King having an interest in the teinds, after the Reformation, and the titulars pretending also right, did surrender the same in the King's favours, and submitted to him, who confirmed the titulars' questionable rights, and gave the heritors the benefit of drawing their own teinds, upon a valuation; and therefore the annuity was appointed to be paid out of the teinds to the King, but the surrender did not bear, "teinds included."

Stair, v. 1. p. 78.

1662. February 20. EARL of CALNDAR *against* ANDREW MONRO.

No. 21

Teinds found not to be *debitum fundi* affecting singular successors.

The Earl of Callander pursues Andrew Monro of BeerCrofts for the valued teind duty of his lands, several years; who alleged, Absolvitor for the teinds intromitted with by his author preceding his right. The pursuer replied, That teinds being valued, are like an annual-rent, and are *debita fundi*, by the act of Parliament 1633, anent valuations; the teind-masters being appointed to be infeft in the right of the teind, according to the valuation.

The Lords found the defence relevant, and found not the teind to be *debitum fundi*, albeit valued.

Stair, v. 1. p. 103.