

1674. *February 3.* JEAN BLAIR, Relict of umquhile ALEXANDER FERGUSON, *against* The PARISHIONERS of KINGARTH.

JEAN Blair, being assigned by her husband to a decret conform, obtained at his instance, against the parishioners of Kingarth, as having right to the teinds, parsonage and vicarage, of the parish, which was a prebendary of the Chapel Royal; she did thereupon insist against the heritors for their vicarage teinds.

It was ALLEGED for Stewart of Kilchattin, one of the heritors, That he ought to be assoilyied, because he had right, by progress, to a tack granted by Mr Archibald Sinclair, who was then prebend of the Chapel Royal, of the whole parsonage teinds of his lands for years yet to run; and, by virtue thereof, had been in possession of his whole teinds, parsonage and vicarage; so that, unless the pursuer can allege that her cedent, by virtue of his right, had *decennalem et triennem possessionem*, the pursuer could pretend no right.

It was REPLIED, That vicarage and parsonage were *distincta jura* of their own nature, and a tack of the parsonage could not include the vicarage; so that there was no necessity to prove *decennalem et triennem possessionem*, Kilchattin having no title or interest in the vicarage.

It was DUPLIED, That albeit, in the greatest part of Scotland, parsonage and vicarage teinds are distinct and separate rights, yet, in the Western Isles, the Bishops within their quarters, and parsons presented to a parsonage only, by virtue of their office, without mentioning any thing of vicarage, have right thereto, and their tacksmen: likeas, by the committee of plat, the minister of Kingarth did get an augmentation and locality of £40 out of the vicarage teinds, wherein the prebend was called and compearing.

The Lords did find, That albeit, within the Bishop's quarters, there was no distinction of parsonage and vicarage, that being a particular custom in the Lewes as to the Bishop's quarters, yet the prebend of Kingarth being presented both to parsonage and vicarage, which were distinct rights of their own nature, as tacksman of the parsonage only, not mentioning the vicarage nor the prebendary in general, did not comprehend the vicarage; and so repelled the defence, and sustained the summons, in respect of the reply.

Page 405.

---

1674. *June 12.* The COMMISSIONERS for LINLITHGOWSHIRE *against* The FREEHOLDERS.

IN a pursuit, at the Commissioners' instance, for payment of their fees, conform to the late Act of Parliament of the first session;—it was ALLEGED, That, by the said Act of Parliament, there was only allowance given of £5 *per diem* for every day that they should sit and attend the Parliament; whereas it was offered to be proven that the Parliament did not sit, but was adjourned many of the days for which allowance was craved; and that, during the time the Parliament did sit, they were not actually present, but absent many days.

It was REPLIED, That the Act of Parliament was opposed, which bears an allowance for every day from the first to the last day of every Parliament, as

should be attested by the clerk-register under his hand ; and that without any exception when the Parliament did sit or not, or when the commissioners were absent.

The Lords, having considered the Act of Parliament, did find, That no allowance ought to be given where there were adjournments of Parliament for any long time, except to commissioners who were for remote shires, who could not conveniently get home and return to their own houses upon their private business ; but, as to commissioners for shires near to Edinburgh, not only they should have no allowance when the Parliament was adjourned for above eight days, but even when they were adjourned for a few days, they should have no allowance but when they were actually in Edinburgh attending the Parliament.

*Page 415.*

1674. *June 13.* MR COLLINE CAMPBELL *against* GEORGE CAMPBELL of AIRDS, and MR JOHN, his Brother.

IN a suspension raised at the instance of George Campbell, and Mr John, his eldest son, who were charged at the instance of Mr Colline, his second son, to make payment of the sum of \_\_\_\_\_, contained in their bond, upon this reason, That, by a condition in the bond, there was no annualrent to be paid during the father's lifetime ; and, therefore, the father being yet alive, and the annualrent being only due by the eldest son after the father's decease, the principal sum could not be charged for, to be lent out to another upon annualrent ; seeing that would evacuate the condition of the bond, and take from them the benefit of making use of the principal without payment of the annualrent.

It was ANSWERED for the charger, That, notwithstanding of that condition, there being a special term of payment inserted in the bond, with the consent to raise horning and charge for payment after the said term, both by the father and elder brother, the letters ought to be found orderly proceeded, notwithstanding of the said condition, and that the father was yet alive.

The Lords did find, That this bond, being conceived as said is, the condition would import no more but to free the suspenders of annualrent until the term of payment, the father being then alive ; and therefore ordained the letters to be put in execution, and annualrent to be paid since the term of payment.

*Page 416.*

1674. *June 16.* MR WILLIAM DUNDAS *against* MAJOR BIGGAR of WOLMET.

IN a count and reckoning at Mr William Dundas his instance, as having married one of the daughters of Wolmet, against Major Biggar, who was curator to her and the rest of the sisters ; there being an article, craving that the Major should be liable for the back-tack duties which the daughters were decerned to allow to the wadsetter, upon these reasons :--That the daughters having right to the coal of Wolmet, by a sub-tack flowing from the Laird of Wolmet, their father, who had granted a wadset of the lands, upon a back-tack, for