

1678. July 12.

SIR JOHN FORBES of Monimusk *against* MENZIES of Pitfoddels.

No. 103.

In an action pursued to have it found that Menzies ought to bear a proportion of the Ministers' new augmentation, because his teinds, though his charter designed them *decimæ inclusæ*, yet were not truly such as have the privilege of exemption from paying any part of Ministers' stipends; because they were known and separate from the stock, in so far as his charter bore a separate *reddendo*, and duty payable for these teinds, viz. twenty-eight bolls of victual; likeas, *de facto*, they bore a part of the Ministers' old stipend; "the Lords found they were not the true kind of *decimæ inclusæ*, and therefore decerned him to bear a part of the new augmentation."

Fountainhall, v. 1. p. 7.

No. 104.

1678. July 16. EARL of QUEENSBERRY *against* GEORGE DOUGLAS.

A pursuit for teinds. Alleged the acres were of old a vicar's glebe, which by the Canon law paid no teind. Answered, Although they were free of the vicar's possession, yet they cannot plead exemption in a laick's, and the 62d Act, Parl. 5. James 6th, (1578) mentions not vicar's glebes. The Lords sustained the allegiance, unless the pursuer would prove they had paid teind within these forty years. It would not hold in vicar's lands, for they have no such privilege.

Fol. Dic. v. 2. p. 438. Fountainhall MS.

1678. July 17.

JOHN HOPE of Hopetoun *against* GEORGE YOUNG in Winchburgh.

No. 105.

Relief from
Ministers'
stipend, by
what means
obtained?

John Hope pursues George Young for the teinds of certain lands, which George bruiked by tack. Alleged, *absolvitor*, because, by the Earl of Winton's disposition, to the pursuer, of these lands, the defender's tack and prorogation thereof is expressly reserved, bearing a certain duty to be paid by him for feu, teind and silver duty; and so the pursuer can never be heard to crave any more than that duty which is stated in the disposition accepted by him, and by which he bruiks; besides, by the tack, he is to be relieved of Ministers' stipends, which clause would not have been inserted had he not paid the tack-duty for teinds and all; likeas, the defender and his predecessors have been in immemorial possession of these lands for payment of the tack-duty, both for stock and teind, and the teind was never drawn. Answered, Neither his tack nor rental mentions the teinds to be set in tack, and therefore he can never have right to teinds which are not disposed to him; and the mentioning the duty in Hopetoun's disposition can never give him

a right to teinds if he have it not before, &c. "The Lords found the defence founded on the rental, tack, and prorogation thereof made to the defender, with the exception from the clause of warrandice, contained in the disposition made by the Earl of Winton to Hopetoun, and that the defender has been in use to pay, and the Earl of Winton to receive, the duty contained in the rental and tack, relevant to be proved by the defender."

No. 105.

Fountainhall, v. 1. p. 8.

1684. March 11. TULLIALLAN against CULROSS.

In the debate between the two kirks of Tulliallan and Culross, whether *decime inclusa* could be burdened to make up a Minister's stipend, where there was no free teinds in the parish *aliunde*; the Lords ordained the allocation and mortification to be produced, and declared they would hear the point in their own presence. Sir George Lockhart affirmed they might as well burden the stock, for such teinds were in effect stock. But it may be queried, if, at least the tenth penny mail paid out of these *decime inclusa* by the 29th act Parl. 1587, annexing Kirklands to the Crown, Art. 16th, may not be burdened with Ministers' stipends; See 10th January, 1662, Renton against Ker, No. 20. p. 15632.

No. 106.

Fountainhall, v. 1. p. 281.

1708. January 20. MAJOR CHIESLY against SIR ALEXANDER BRAND.

The deceased Major Chiesly having sold his lands of Dalry to Sir Alexander Brand, and having submitted to the deceased Duke of Argyle what right he should accept of for the teinds of the lands; his Lordship, by his decreet-arbitral, decreed, That after the tack now running, let by the Lord Bellenden, either a new one should be procured from his heirs-male for three nineteen years, or a prorogation from the commission of the kirk for the same term of years. When the rights came to be searched, they found the tack expired, which was then thought current, and no heir-male could be condescended on, so the right could not be completed in the precise specific terms of the decreet-arbitral; therefore this method was fallen on. They belonged to the Bishop of Edinburgh during the standing of Episcopacy, and since its abolition to the Queen, from whom a tack is obtained to the said Sir Alexander Brand for four nineteen years; and this being offered as better than what he was to have got by the decreet-arbitral, he objected, *Imo*, That seeing the decreet-arbitral was now found imprestable, et nemo tenetur ad impossibile, res nunc devenit in eum casum, that the minute of sale betwixt the Major and him must be the rule, by which he is to give the same price, viz. twenty years purchase for the teind, that he did for the stock; and seeing

No. 107.

Nature of a
tack of
teinds.