

*tum est possessum, et non amplius*; and, even in the Popish countries, they are totally regulated by possession, so that sometimes the *quota* is not the *decima*, but the 20th or 30th part. And, on the 24th of Nov. 1665, between this same *Bishop's Predecessor*, and the *Fishers of Greenock*, as observed by Stair in his Decisions, the Lords found they had prescribed an immunity of paying any teind to the Bishop for fishes taken in their creeks, because he could not prove he had been in possession within these 40 years. And, in the case of *Mr George Shiels, minister at Prestonhaugh*, against his *Parishioners*, mentioned by Stair, *tit. Of Teinds*; the Lords found a churchman's possession of such teinds did only tie the payers, but not others in the same parish, as to such species and kinds as they had not been in use to pay. And the decision recorded by Stair, 13th December 1684, *Bishop of the Isles* against *James Hamilton*, does no ways prove his possession; but, on the contrary, ordains him to adduce probation of the custom. And, as to the demand of £4 *per last*, it is most extravagant; for, by a decision in Dury, 26th July 1631, *Bishop of the Isles* against *Shaw*, it appears the price then was only a merk the last: and as to fish taken *in alto mari*, seeing it is not determined how many miles the Bishop's jurisdiction extends beyond the shore, he can claim no teind thereof.

The Lords, upon Harcus's report, found the Bishop could not burden the Merchants of Edinburgh with any such servitude and teind-duty, unless he proved that he or his authors had been in possession of exacting and getting payment thereof.

*Vol. I. Page 350.*

1683 and 1685. ROSS of TULLISNAUGHT *against* GAIRDEN of MIDSTRAITH.

1683. December 18.—THE Lords (though it was a concluded cause,) ordained witnesses yet to be adduced, anent Tullisnaught's accession to the vitiation of the paper in question, only upon a letter written by Midstraith's wife, bearing, that there were further witnesses to be got not formerly known.

Animosity arising on this process, I hear, in August, Tullisnaught meets Midstraith in the way, and wounds him.

*Quæritur* if this assault will make him criminally guilty of the falsehood, as it will make him lose the civil effects of the depending process.

*Vol. I. Page 251.*

1685. March 10.—Upon advising the improbation pursued by Ross of Tullisnaught against Gairden of Migstrath, mentioned 18th December 1683;—the Lords first committed both parties to prison; and then, after trial, found the bond of thirlage (except as to four bolls of victual yearly,) was vitiated, and of *temporary* was made *perpetual*; whereupon they liberated Tullisnaught, and improved the paper as false, and detained Midstrath in the tolbooth; and the next day voted if he should be referred to the Criminal Court, as art and part, or otherwise accessory. But being chamberlain to the Duke of Gordon, they found he had not made use of it, but only found it among his father's papers; and so *minime constabat* who had falsified it: yet they fined him in L.1000 Scots of expenses to the pursuer, and ordained him to lie in prison till it were

paid. The King's Advocate was so displeased with this lenity, that he threatened, though falsehood was growing daily, yet he would never pursue one of them again, but liberate them all, that they might at last cheat the Lords themselves.

*Vol. I. Page 351.*

1685. *March 11.* THE DUKE OF QUEENSBERRY *against* THOMAS BORELAND, &c., HERITORS of the KING'S STABLES.

IN a reduction pursued by the Duke of Queensberry, high-treasurer, as constable and captain of the castle of Edinburgh, against Thomas Boreland and the other heritors and possessors of the King's stables, alleging they were annexed property, as part and pertinent of the Castle of Edinburgh;—the Lords, on Castlehill's report, found that the ground being designed the King's Stables in the defender's own infestments, it is a part of the King's annexed property; unless the defenders can instruct that the same was legally dissolved, or document that there were other grounds called the King's Stables belonging to the Castle of Edinburgh, seeing the 176th Act, Parl. 1593, annexes the King's Stables to the Crown; which must be understood of thir, unless other stables be condescended on.

By the 204th Act, Parl. 1594, and Act 11th 1633, it is declared, that dissolutions shall not extend to the King's Castles, which will also include all their pendicles. But the feu of thir stables was long prior to these Acts, *viz.* in King James V.'s time, by virtue of general Acts of dissolution then standing.

*Vol. I. Page 351.*

1685. *March 12.* The EARL of SOUTHESK *against* YOUNG of AULDBAR.

See the prior part of the Report of this case, Dictionary, page 7,902.

THE case of the Earl of Southesk against Young of Auldbar, anent the Muir of Montreumont, [*Mons Romanorum,*] mentioned 18th December 1679, was reported by Forret. The Lords find the progress produced by Auldbar sufficiently connected, and prior to Southesk's authors' rights of forestry and keeping in 1582; and therefore decern for his *firth*, and his servitude of pasturage, feal and divot, through the muir, in regard he had proven immemorial possession; though it was ALLEGED that the said muir being a part of the king's property, it was imprescriptible.

*Vol. I. Page 351.*

See Stair's report of this case, Dictionary, page 7,899.