

pursued by Tweeddale for their rents, they craved allowance of a fourth part of the tack-duty for the drawn teind. No. 42.

The Lords finding the tack-duty was but reasonable, they modified only a fifth part thereof for the drawn teind.

*Harcarse, No. 965. p. 274.*

1684. February.

ARCHIBALD FRIERLAND against The LAIRD of ORBISTOUN.

Found, That a tack of teinds let by a minister for his life-time, and five years after, without consent of the patron, did subsist for three years, and was only null *quoad excessum*. And another tack of the teinds granted to the patron, being questioned as simoniacal, and quarrellable by the next incumbent, the Lords found, that, by the act 1. Parl. 21. James VI. and act 9. Parl. 1. Charles II. patrons are allowed to transact with their Minister for a tack of the teinds, reserving a sufficient allowance the to Minister, which, by law, is not simony. No. 43.

*Harcarse, No. 966. p. 274.*

1684. December 4. BULLO, Minister of Stobo, against PARISHIONERS.

In a pursuit at the instance of ——— Bullo, Minister of Stobo, against his Parishioners, for the parsonage-teind of their lands, No. 44.

It was alleged for the defenders: That though the pursuer be presented to the parsonage, he can have no further claim than to his stipend, which is modified by a decree of the Commission.

Answered: A parson has oft-times a modified stipend when the teinds of his parish are under tack, and when the tacks are out, he has right to the teinds. Besides, it is *jus tertii* to the defenders, who have no tacks of their own teinds, to make such an exception against the Minister's title.

The Lords sustained the answer, and decerned for the teinds.

*Fol. Dic. v. 2. p. 439. Harcarse, No. 692. p. 195.*

1685. March 1.

MR. ARCHIBALD GRAHAM, Bishop of the Isles, against JOHN CHARTERIS, &c.

Mr. Archibald Graham, Bishop of the Isles, having charged John Charteris, George Wedderburn, and other merchants of Edinburgh, for £.4 Scots, as the price of the teind for each last of herring taken in the seas adjacent to his diocese, they suspended, on this ground, That he was never in possession of any such teind-duty from them, who are not the slayers and first takers, but only the buyers at No. 45.

A churchman pursued the buyers of salmon caught upon the coast of his district

No. 45.  
for teind.  
Found, that  
he could not  
burden mer-  
chants with  
any such ser-  
vitude, with-  
out use of  
possession of  
such a right.

the second or third hand; and that all these decimæ minores seu vicarie sunt locales et consuetudinariæ, et tantum in iis est prescriptum quantum 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 twentieth or thirtieth part. And, on the 24th of November, 1665, between this same Bishop's predecessor and the Fishers of Greenock, as observed by Stair, in his decision, No. 58. p. 10758. the Lords found they had prescribed an immunity of paying any teind to the Bishop for the 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 Shields, Minister at Prestonhaugh, against his Parishioners, mentioned by Stair, Tit. of TEINDS, No. 61. p. 10761. 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, 1664, Bishop of the Isles against James Hamilton, No. 23. p. 15633. does nowise 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 Durie, 26th July, 1631, Bishop of the Isles against Shaw, No. 17. p. 15631. it appears the price then was only a merk the last. And as to fish taken *in alto mari*, seeing it was not determined how many miles the Bishop's jurisdiction extends beyond the shore, he can claim no teind thereof. "The Lords, upon Harcarse'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."

*Fol. Dic. v. 2. p. 437. Founainhall, v. 1. p. 350.*

No. 46.

1688. June. LIRITHILL against SIR JAMES COCKBURN.

A minister having assigned a tack of teinds he was titular of, let by himself, the Lords found the tacksman, or sub-tacksman, liable as intromitters to the assignee, as they were to the titular; but determined not if they have a hypothec in teinds as in lands.

*Harcarse, No. 967. p. 274.*

1695. February 26.

SIR WILLIAM BRUCE of Kinross against SIR DAVID ARNOT of that ilk.

No. 47.  
Heritor not  
bound to  
keep his land  
in tillage for  
the benefit of  
the titular.

Sir William Bruce pursued Sir David Arnot for payment to him, as titular, of his parsonage-teinds. Alleged, He has converted his arable ground to grass, and so there is no parsonage due; and for vicarage, Sir William has no right to it. Answered, an heritor may inclose and improve his ground as he thinks fit; but he must not do it *in emulationem vicini*, or in prejudice of me, who have a right;