No. 45. for teind. Found, that he could not burden merchants with any such servitude, without use of possession of such a right.

the second or third hand; and that all these decimæ minores seu vicariæ sunt locales et consuetudinariæ, et tantum in iis est præscriptum 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 Shiels, 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.

1688. *June.* LIRITHILL *against* SIR JAMES COCKBURN.

No. 46.

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 æmulationem vicini*, or in prejudice of me, who have a right;