If a Bishop may lawfully discharge teind tack-duties for 19 years to come in prejudice of his successor, albeit he should die long before the 19 years do run out? No. 130.

Fountainhall, v. 1. p. 37.

1698. *June.* 30. SIR WILLIAM BRUCE of KINROSS *against* SIR DAVID ARNOT.

No. 131.
Mode of valuation.

Sir William Bruce of Kinross, as titular of the teinds of the parish of Portmoog, against Sir David Arnot of that ilk, for spuilzie of teinds. Alledged, Absolvitor for all teinds preceding the time you served inhibition against me; because I was in use of paying allenarly three chalders of victual to the Minister, and never being called nor interpelled for a greater duty, it must be presumed there have been old tacks for that rent, and so he bruiks by tacit relocation till the inhibition, and cannot be charged for more. Answered, parsonage-teinds never prescribe farther than an immunity for all years preceding 40; and the case founded on, 28th November 1676, Sheils, Minister of Prestonhaugh, against his Parshioners, was in the case of vicarage, which are local and prescriptable, No. 61. p. 10761, and that of the 16th June 1681, Freerland against Hamilton of Ormiston, No. 63. p. 10763, does not concern this case; for the Minister was not titular of the teinds, and their interest in the teinds are quite distinct: The titular's discharge of his proportion of the teind cannot liberate the heritor from what he owes the Minister; so neither can the Minister's discharge be obtruded against the titular. The Lords found the use of payment to the Minister could not defend against the titular *quoad* the superplus of the teind, notwithstanding of the titular's long cessation in craving it. Then the question arose, how the teind should be valued for these years? Sir William claimed it at the 5th part, conform to a decreet of valuation obtained by him. Arnot answered, that could only operate as the rule in time coming, for the lands might be improven of late; and some years there was little or nothing tilled or sown, but lay in grass, in which case the parsonage teinds were not due, as appears by the decision, 9th June 1676, Burnet against Gib, No. 102. p. 15717. Replied for Sir William, if you have, *in æmulationem vicini*, cast your lands lee, that cannot prejudge me, and it is inextricable to prove how much was sown every year to constitute a quota, and you should instruct what lay in grass, else it must be all presumed as arable. The Lords would not take the subsequent valuation as the rule of preceding years; but for constituting the quantity, allowed a conjunct probation to either party what the value of the teinds were the several years acclaimed, which will be very difficult to find out farther than by a conjectural trial.

Fountainhall. v. 2. p. 8.