

same hazard and risk of being quarrelled by the Bishops. The Lords repelled the objections, and sustained the tack offered. No. 107.

*Fountainball, v. 2. p. 421.*

\* \* See Forbes's report of this case, No. 49. p. 15650.

1737. June 15. MINISTER of BARRIE against GAIRDEN of Lawton.

No. 108.

In a process of augmentation, a defence was made by one of the heritors, That his lands were teind free, in respect they did anciently belong to the abbey of Balmerino, a convent of the Cistercian order; and, in the year 1539, were feued out to the defender's authors by the abbot and convent *cum decimis garbalibus earundem*; that the Cistercians were one of the four privileged orders by the law of Scotland, whose lands were teind free, and that the defender, as deriving right from them while this privilege subsisted, was entitled to the same privilege; and for this Lord Stair was appealed to, Lib. 4. Tit. 24. § 9. and Sir George M'Kenzie, Book 2. Tit. 10. § 7. Answered, *1mo*, The Cistercians had no privilege as to their teinds, except as to lands acquired before 1120, the date of Pope Innocent the Third's canon, which excludes the privilege of the four orders as to *acquirenda*; and, though this will exclude the privilege entirely with regard to Scotland, where the Cistercian order had no property for a century thereafter, it only shows the inaccuracy of our writers, who, in laying down the doctrine in general, have not adverted, that it would not apply to Scotland. *2do*, The canon law, which introduced that privilege, makes it purely personal in favour of the Cistercian monks, and not communicable to their singular successors; and this is Sir George M'Kenzie's opinion in his observations on the act of annexation 1587. The Lords repelled the defence founded on the charter produced for the defender.

*Fol. Dic. v. 2. p. 437, 438.*

1746. July 2. MUIR against CUNINGHAM.

No. 109.

An heritor having a tack of his teinds, and feuing out the lands, reserving the teinds, it was contended by the other heritors that the teinds of those feued lands should be burdened as free teinds. The Lords found that these teinds were liable to be allocated with those of other heritors who had tacks, as if no feu had been granted.

*Rem. Dec. D. Falconer?*

\* \* This case is No. 100. p. 10820. *vide* PRESCRIPTION.