

then all in one hand. It comes thereafter to be dismembered, and in sundry hands. The minister pursues one of them for the stipend due furth of the whole.

He ALLEGED,—He was only liable *pro rata portione*, conform to his teinds, and that the most he could be obliged in was, *dedere ipsa corpora* of the teinds; for stock pays not ministers' stipends. Yet it is affirmed, the Lords found him liable *in solidum*, reserving his relief against the rest for their proportional possessions; since the minister *ab initio* had to do with but one: and if, *ex post facto*, by alienations unknown to him, and without his consent, it came to be divided, he who is *persona in jure favorabilis*, must not be distracted from his function to convene all: and the whole barony was made liable by decreet of locality, and so *unamqueque globa servabat*; and the stipend was in this like the soul, *tota in toto, et tota in qualibet ejus parte*. And such a quantity being imposed on the barony, it was without respect to the teinds more than to the stock; and, in this case, both were confounded and consolidated together. Yet, in law, the teinds seem to be the proper and specific subject-matter which can only be affected with ministers' stipends. Act 10, Parl. 1567. See Durie, 20th Dec. 1622, *Preston*.  
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1678. December 12. GAIRDEN against GAIRDEN, her Husband.

A BILL of advocacy was presented to the Lords of Session, of a process of divorce upon adultery, pursued before the Commissaries of Edinburgh, by one Gairden, against Gairden her husband, in regard of some irregularity and informality in the Commissaries' procedure, in examining of witnesses before liti-contestation.

The Lords refused the bill, and remitted it back to the Commissaries, as the only judges competent to such actions in the first instance; but if they had found any irregularity, the Lords would have rectified the same, and sent it back to the Commissaries; as they have done in the case of services of brieves, and the like. See an example of it in the case of *Fork* and *Fyfe*, July 1673. *Item*, in advocations from the Admiral Court, June 1673, [No. 391.]

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1678. December 12. REPRESENTATIVES OF WILLIAM KAY against CLEGHORN.

IN a cause pursued by the executors and representatives of William Kay, late bailie in Edinburgh, against Cleghorn a baxter there, before the Commissaries of Edinburgh, for payment of a debt which they referred to his oath; he deponed, it was true he was once owing that debt, but it was as true he had paid it, but only the sum of            yet resting. This being advised by the Commissaries, they repelled the quality of payment, and ordained him to prove it *aliunde*.

This being quarrelled upon iniquity, before the Lords, in a suspension, they found the quality intrinsic, and assoilyed, and would not divide the oath. See