

1708. *January 20.*

The KIRK SESSION of NORTH LEITH, and WILLIAM WILLIAMSON, their Tacksman, *against* THOMAS BROWN and ANDREW SKEEN, Merchants.

**No. 50.**

A right to teind fish imported to a certain harbour not extended to fish imported in order to be exported only, whereof the teind was drawn in another place where they were taken.

In the action at the instance of William Williamson, as having right by tack from the Minister and Kirk Session of North Leith, to the teind of fishes imported to Leith and Newhaven, against Andrew Skeen and Thomas Brown, for payment of the teind of several kinds of fishes taken in the North Seas, and imported to Leith, in order to be exported to the Straits, upon this ground, That the Minister of North Leith had been in immemorial possession of 20s. for each last of herring, and 1s. of each twenty dry fish imported to Leith, conform to a right flowing from the Lord Holyroodhouse; for instructing whereof, the pursuer produced several decrees *in foro* against several merchants for payment of such a teind, with a ratification of these decrees in Parliament;

Alleged for the defenders: *1mo*, The decrees produced were *res inter alios quoad* them, and cannot exclude their defence, viz. That the teind of the fishes imported was already paid at the place where they were taken in the north, and they cannot be liable to a second teind; *2do*, The fishes for which the teind is now claimed were brought to Leith to be put aboard a vessel for export to the Straits, and nothing could be claimed for them but the ordinary shore-dues.

Answered for the pursuers: They have right to the teind of what is imported, without exception of what is re-exported; which distinction would make the execution inextricable, afford a seed of unbeseeeming differences and pleas, and disturb the Minister from attending his cure. There needed a particular statute in the matter of customs and excise upon goods imported, for a drawback of the duty of what should be re-exported within a limited time; and the pursuer's right is affected with no such quality or statute; so that their *jus quæsitum* by the importation cannot be taken away by the subsequent exportation.

The Lords sustained the defence, that the fish whereof the teinds are pursued for were taken in the north seas, and paid teind where they were taken, and were imported into Leith in order to be exported only.

*Forbes, p. 224.*

1708. *February 13.*

The MARQUIS of TWEDDALE, *against* ALEXANDER ORROCK of that Ilk.

**No. 51.**

Annuity not due by the sovereign's tacksman for teinds belonging to the sovereign

The Marquis of Tweddale having obtained from the late King William a tack for several nineteen years, of the feu and teind-duties of the Abbey of Dumfermling, charged the Laird of Orrock to pay 295 pound 8 shilling 6 penies, as the price of rental bolls, payable by him for the teinds of his lands the crop 1706; who suspended upon this ground, that the charger and his father had these forty