

that the teinds in question are mortified by the King to a kirk, and that the same was found relevant, and that the said John succumbed in proving thereof, yet he offers him to prove, that before the term elapsed, he produced the mortification before the Commissary, and thereupon took instruments, which is produced.

No. 25.

Which the Lords found relevant.

Stair, v. 1. p. 243.

1666. June 23.

EARL of EGLINTOUN *against* LAIRD of CUNNINGHAMHEAD.

The Earl of Eglintoun pursues the Laird of Cunninghamhead for the teinds of Peastoun; who alleged, Absolvitor for £.60 yearly, which, by decret of the Plat, he paid to the Minister of Irvine, and produces the decret. It was alleged, That where the decret bore, "out of the teinds," it was a mere error of the Clerk, and disconform to the ground of the decret, which was a tripartite contract, whereby the Earl of Eglintoun agreed for so much victual, out of his teind, beside what was to be paid by the town of Irvine and heritors; and the heritors obliged them, and their heirs and successors in these lands, to pay so much moneey; which cannot be understood out of their teind, they being obliged, as heritors, and the teind not being theirs, but the Earl of Eglintoun's, who was obliged so much out of his teinds, besides these obligations. It was answered, That this, being to lay a burden of stipend upon the stock, is most unfavourable, and the meaning thereof cannot be inferred, unless it had borne expressly, out of the stock; especially, seeing the teind was under tack, and it was *ex gratia* for them to pay any more than their tack-duty; but now when their tacks are expired, the Earl cannot crave the whole teind, and lay this burden upon the stock; 2dly, The Lords cannot alter the express tenor of the decret of Plat, which was a Commission of Parliament.

No. 26.

Extent of the burden on the teinds.

The Lords found, That the tripartite contract, as to this, did not burden the teinds; and therefore, seeing the Plat could only decern out of teinds, they found, that, by this contract, the heritors behoved to relieve the teinds of this burden out of their stock.

Stair, v. 1. p. 380.

1667. June 15.

Mr. HUGH GRAY *against* FORBES, Minister of Innerkeithing, and TENANTS of NEITHER HORSEBURGH.

The tenants of Neither Horseburgh having suspended these two Ministers upon double pointing, they alleged they had made payment, *bona fide*, of their rents conform to their tacks. It was answered, that they were called to Mr. Hugh Gray's decret in *anno* 1656; and charged thereupon thereafter the same

No. 27.

The *bona fides* of tenants paying their rents.

No. 27. year, which did put them *in mala fide*. It was answered, that there having nothing followed upon the charge, but the charger being silent for fifteen years, the tenants *favore rusticitatis* cannot be thought to continue *in mala fide* all that time, to infer double payment, else it might continue for forty years. It was answered, once *in mala fide*, ay *in mala fide*, and that these tenants did still remember and suspect the pursuer's right, appears, because they took discharges, bearing warrandice of the same

The Lords ordained the defenders to produce their discharges, that the warrandice might appear, being loth to decern the tenants in double payment, if the charger could have access to the other Minister, or his representatives.

It was alleged for the present incumbent of Innerkeithing, that in a former double pointing, raised by the tenants, he was preferred to the crop 1665, and in time coming. It was answered, that the said decret was in absence of Mr. Hugh Gray; and that it was null without probation, for there was nothing produced for the Minister of Innerkeithing, but his presentation and collation, which were but merely general, and nothing produced to instruct, that their teinds were of his parish, or within his benefice. It was answered, that he was secured by the act of Parliament anent decreets of double pointing.

The Lords found that what the Minister of Innerkeithing, had uplifted, by virtue of that preference, the act of Parliament would secure him thereanent, but found he had no right as to the future.

Stair, v. 1. p. 462,

1667. November 26. DALZIEL against —————.

No. 28.
Extent of the
Minister's
right in con-
sequence of
his presenta-
tion.

The Minister of Prestonhaugh, Mr. John Dalziel, pursued for the teinds of Lanton, upon his presentation to the said kirk and teinds, parsonage and vicarage. It was alleged, No process, unless he were presented to be prebendary, seeing the said kirk is a member of the collegiate kirk of Dunbar, and cannot be made appear to be dissolved, and erected in a several rectory.

The Lords found, That being presented to be Minister at the said kirk, and to the teinds, which are the patrimony of the prebendary, it is equivalent as if he were presented prebendary; and when there is a presentation to a kirk, which is a parsonage, and to the teinds, the Minister will have right, though he be not presented to be rector or parson.

Dirleton, No. 112. p. 47.

1669. February 24.

The EARL of KINCARDIN against The LAIRD of ROSYTH.

No. 29.
Right of
teinds not af-
fected by a
decreet of Par-

The Earl of Kincardin pursues the Laird of Rosyth for the teinds of his lands, to which the pursuer has right. The defender alleged, That he had obtained a decret of the High Commission for Plantations against the Earl, whereby they