

1763. *December 7.* EARL OF SELKIRK *against* M'MORRAN.

No. 77.

Citation by the titular, in a process for payment of the full teind, was found to be a sufficient interruption of tacit relocation. But the judgment was afterwards altered.

Sel. Dec.

* * This case is No. 214. p. 15324. *vote* TACK.

1764. *February 1.*

MARGARET, AGNES, and ANNE SHORTHEADS, and their CURATORS, *against* The DUKE of BUCCLEUGH, and his CURATORS, and The EARL of HADDINGTON.

The pursuers, heirs-portioners of William Shorthead of Colmslee, brought an action of sale of the teinds of Colmslee against the Duke of Buccleugh and the Minister of Melrose, setting forth, That the teinds of these lands had been valued as far back as the 16th December, 1629, agreeable to a decree of valuation, which was discovered in the hogsheds in the Low Parliament-house, and recorded in the new register of the commission of teinds, 11th December, 1728.

In this process, the Duke of Buccleugh appeared, and alleged, That the teinds of the lands now in question, along with several others, had been purchased by his predecessors from the family of Haddington; and that the present Earl was obliged to protect him against every process of this nature.

Lord Haddington, having been called, contended, That no sale could proceed of these teinds, because the lands had been feued out by his predecessors to the pursuer's ancestor, upon the 18th of May, 1621: That the then Earl of Haddington had, at that time, right both to the lands and the teinds; and that, as he had not disposed the teinds, he must be understood to have reserved them; and therefore, in terms of the act of Parliament 1693, Chap. 23, the heritor could not insist upon the privilege of buying these teinds; for by that statute it is expressly declared, "That whereas there is a great difference as to teind, whereof the right has never come in the person of the heritor of the lands, and those teinds whereof the right has come in the person of the heritor, and the lands thereafter sold or feued out by the heritor, reserving the teinds, or where the teinds are not disposed; and that, in such a case, the heritor who sold or feued out the lands should no more be obliged to sell those teinds, than a superior or other heritor can be obliged to sell his feu-duties, or any other right of property that he has reserved, when he sold or feued out the lands; therefore, it is statuted and ordained, that this commission shall not be extended as to the selling or buying of such teinds, whereof the right has once been in the person of the heritor of the lands, and which lands were thereafter sold or feued out by the heritor, with the

No. 78.

Whether a vassal, by the acceptance of a new right, is barred from founding upon more ancient titles established in his person, because these were not mentioned by the superior in the renovation of his feu; and whether the superior, by granting such a right, is brought within the clause of the act 1693, respecting the sale of teinds?