

Answered, They, by their wadset, having right both to stock and teind, and receiving the duty contained in the back-tack, both for stock and teind, it was in the charger's option to seek his stipend either from the tenants, Mr William, or yet from the wadsetters. The 2d reason given was, That the suspenders brooked the teinds, yet their right proceeds from Mr William Oliphant, who is tacksman to the charger, of the whole teinds of the barony of Strabrock, for payment of a tack-duty, and who has been still in use of payment of it; and so he could not charge the suspenders upon his provision, but should have pursued for the tack-duty, for which the suspenders are not liable, but only his tacksman against whom he may have personal execution for the same, but not against the intromitters. Answered, The tack-duty being a part of his stipend, he might charge either the tacksman or intromitters for the same. The 3d reason was, Albeit the suspenders were liable to the tack-duty, yet they can be no further subject thereunto, but to a proportional part thereof, according to the proportion of the land contained in their security of the said barony of Strabrock. Answered, They must be subject all that their teinds are worth, aye and while the tack-duty charged for be satisfied; and it were no reason to put the minister to seek the same from each one within the barony, according to the proportion of land he brooked; but let the suspenders, if they please, seek their relief off the tacksman, or yet off the rest of the possessors, as they may best. The Lords found the letters orderly proceeded, notwithstanding of all these reasons.

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1633. *March 31.* JOHN CHISHOLM *against* JOHN PRINGLE.

JOHN Chisholm having pursued John Pringle of Blindlie, and certain others, for spoliation of some sheep from him, the summons being admitted to probation, the spuilie was proven against the said John and the rest of the defenders, being some of them his servants, and others gentlemen of his name and friends that were in company with him; so that, by the ordinary form, the decret should have divided against the whole defenders. Yet the Lords, in respect that there were none of them *solvendo*, except Blindlie, found the libel proven to infer payment *in solidum* against him.

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1633. *July 6.* The LAIRD of WAUCHTON *against* The LAIRD of AITKIN.

THE Laird of Wauchton having set a tack of some lands to the Laird of Aitkin, he pursued him for finding caution for payment of the tack-duty, or else to remove. The defender being absent, the question was, Whether the summons should abide continuation or not? The advocate for the pursuer maintained stiffly that it needed not be continued, seeing he proved all by production of the contract betwixt the parties; and this action was of the same nature with a re-