

No. 222. the quantity thereof; in respect the suspender, before the time of teinding the year libelled, did not intimate to the College that he would not pay these rental bolls, and required them to draw their teinds; which either he should have done, or otherwise transacted with them thereanent, as he was in use to do other years before, in which he paid not the rental bolls; and having done no such thing, he was found liable the year libelled, and all other years thereafter, wherein he should not do the same, in the quantity of the said rental.

Act. *Nicolson & Neilson.*

Alt. *Cunningham et Burnet.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 427. Durie, p. 677.*

1662. *February.* The LAIRD OF BASSINDEAN *against* BELL.

No. 223.  
Effect of voluntary payment of a greater quantity of teinds than due.

George Home of Bassindean, as tacksman of the teinds of the parishes of Gordon and Woolstruther, pursues William and George Bells for certain quantity of teind duties, whereof they have been in use of payment. It was alleged, Their teinds are valued by a decret of valuation, and that they are obliged to pay no more, but according to the said valuation. It was answered, That notwithstanding of the valuation, they have been in use of payment of a greater quantity, by the space of ten or seven years. It was replied, That voluntary use of payment cannot prejudice the payers further than during their voluntary payment, and cannot take away their right constituted by the decree of valuation, no more than if a vassal should, for divers years, pay a greater feu-duty than what is contained in his infestment.

The Lords found the allegiance relevant.

*Fol. Dic. v. 2. p. 428. Gilmour, No. 36. p. 468.*

1667. *June 27.* MINISTER OF DALRYMPLE *against* EARL OF CASSILLIS.

No. 224.  
The use of payment by a particular measure found to denote the measure meant, when not expressed.

The Minister of Darlymple having charged the Earl of Cassillis for his stipend he suspends on this reason, that he offered payment of the bolls in the Minister's decret, conform to Linlithgow measure, which was the common measure of Scotland, by the act of Parliament, and is by the act of Parliament, the measure of Ministers' stipends. It was answered, that the Minister's decret of locality, was indefinite, and mentioned no measure, and the meaning thereof was sufficiently cleared, because it was offered to be proved by the Earl's oath, that he paid ever since the decret of locality, being 15 years, conform to the measure of Ayr, and that he knew it was the common custom of that country to pay all Ministers with that measure. The suspender answered, that his use of payment, either by mistake, or benevolence, of more then he was due, could not oblige him to the future, especially where the Minister did not found upon his *decennalis* & *triennalis*