

No 58.

termine the right of the ministers of Greenock, whether they had right to the hail vicarage, or that as a small duty; but reserved that to them as accords: And they found, that the defence of a constant fishing elided the condescendence that this fishing was but new.

*Fol. Dic. v. 2. p. 101. Stair, v. 1. p. 312.*

No 59.

The right of teinds suffers not the negative prescription.

1666. February 7.

EARL OF PANMUIR *against* PARISHIONERS.

THE Earl of Panmuir having right to the abbacy of Aberbrothwick, pursues for a part of the teinds thereof. It was *alleged*, Absolvitor; because they had possessed their land forty years free of teind to any body; and by the general act of prescription, all right prescribes not pursued within forty years, and so doth the right of this teind. It is *answered*, That the right of teind is founded on law, and not upon any particular or private right; and therefore, albeit in the case of competition of private parties pretending right to teinds, one right may be excluded by another, yet the teinds themselves must always be due, except where the lands are *decimis inclusis*, and did belong to privileged churchmen of old, such as the Cistercian Order or Templars, manse or glebes.

THE LORDS repelled the defence, in respect of the answer; for they thought, albeit the bygonies of the teind preceding the forty years might prescribe; yet the right of teind could not, more than the customs could prescribe, if they were neglected to be exacted for forty years, or a feu-duty.

*Fol. Dic. v. 2. p. 101. Stair, v. 1. p. 351.*

1666. June 16.

MR ROBERT BENNET, Minister of St Ninians *against* THE TENANTS OF CRAIGFORTH.

No 60.

IN a pursuit for vicarage teinds, pursued at the instance of Mr Robert Bennet, minister at St Ninians, against the Tenants of Craigforth, belonging to the Laird Elphinston; the LORDS found the defenders liable in payment of the vicarage of lamb, stirk, and wool, as being the ordinary vicarage of the country, albeit the pursuer nor his predecessor minister had never been in possession; and assoilzied from all other vicarage teinds, as *decima insolita quæ peti non debent*, unless that the minister would allege, that he and his predecessor had been in possession.

*Fol. Dic. v. 2. p. 101. Newbyth, MS. p. 63.*