

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.

Which the Lords found relevant.

*Stair, v. 1. p. 243.*

No. 25.

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.

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.*

No. 26.

Extent of the burden on the teinds.

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.