

bearing, "such a stipend and locality, so much of it, and for the rest, that the Minister had the teinds of Midshef." It was alleged, That this could not instruct that those whole teinds were allocated; but so much as made up that rest; and the teind is worth twice as much, and therefore the Minister had but the twentieth lamb for the teind, which is but half teind, and was liable to the pursuer for the rest. It was answered, That teinds are *secundum consuetudinem loci*, and if teinds had never been paid, none would be due; and if the twenty lambs were all ever paid, they could be liable for no more.

The Lords found, That, before the intending of the cause, they would not allow any more than what was accustomed to be paid, unless the pursuer offer him to prove, that there was a tack, or use of payment of more, which they would allow accordingly.

*Fol. Dic. v. 2. p. 438. Stair, v. 1. p. 268.*

1666. June 16. MINISTER of ———— against LORD ELPHINSTON.

Minister of ———— pursues the Lord Elphinston for the vicarage teinds of his lands in his parish. It was alleged, Absolvitor, because he bruiked these lands by immemorial possession, without paying any vicarage, and so had prescribed exemption and liberty. It was answered, That the vicarage being due *de jure communi*, desuetude cannot take them away, nor can any prescription give right to them, unless it were by a title; as if the lands had been Templar lands, or belonging to those orders which paid no teinds, but were exempted by the canon law; and therefore, in the last Session, it was found, in the case of Panmuir, No. 59. p. 10760. that 40 years did not prescribe the right of parsonage, except for the years preceding the 40. It was answered, That there was a great difference betwixt parsonage and vicarage, which is local and consuetudinary, which is therefore only found due according to what has been accustomed to be paid; so that the teind of lint, hemp, geese, stags, swine, fruits, fishes, are only due in those parts where they had been so accustomed; and therefore, as custom may take away a part, so it may extinguish the whole.

The Lords found the defender could be no further liable than for that vicarage which was commonly paid throughout all the kingdom, viz. stirk, lamb, and wool; and sustained not the same for milk, or any other particular.

But the defender, upon the 21st of June, having supplicated to be further heard, alleging, that it was a common case, that when the lands were most in labourage, and the vicarage small, and not considerable, that, through the whole country, vicarage was never craved, time out of mind;

The Lords stopped interlocutor, till they were further heard.

*Stair, v. 1. p. 379.*

No. 113.

which was found in the case of lambs.

No. 114.

Vicarage regulated by consuetude.