

possessio; but upon a decret of locality, wherein, though the measure be indefinite, it cannot be understood to be any other measure than the common measure of Scotland, seeing the act of Parliament anent Minister's provisions, bears expressly, that they shall have eight chalders of victual, Linlithgow measure. No. 224.

The Lords having considered the decret of locality, and that it did not extend to eight chalders of victual, but to three chalders of victual, and 400 pounds, which is the rate of four chalders of victual, at 100 pounds the chalder, as is ordinarily rated by the commission in that place of the country, they found the use of payment and common custom of the country, sufficient to declare it to be the measure of Ayr, seeing by that measure, it would not come up to eight chalders of victual.

Stair. v. 1. p. 465.

1669. *January 19.* EARL OF ATHOLE *against* ROBERTSON.

No. 225.

Use of payment to the Minister who granted yearly discharges, mentioned to be for the whole teind-duty, was found to defend the heritor from any additional teind until citation or inhibition.

Fol. Dic. v. 2. p. 427. Stair. Gosford.

* * * This case is No. 34. p. 7804. *voce* JUS TERTII.

1670. *July 15.* BIGGAR *agaigst* CUNNINGHAME.

No. 226.

In a process for teinds libelling the fifth part of the rent, the defenders produce a decree of valuation, against which the allegiance was found relevant, that it was a deserted right, never having taken effect by payment, but tacks accepted by the defenders, and duties paid by them thereafter to a greater quantity.

Fol. Dic. v. 2. p. 428. Stair.

* * * This case is No. 45. p. 14061. *voce* RES INTER ALIOS.

1677. *November 9.* RUTHERFOORD *against* MURRAY.

No. 227.

John Rutherford, as assignee by Mr. James Buchan, pursues Murray of Skirling for several years stipend of the kirk of Skirling, being 500 merks and two chalders of victual yearly, Skirling having the whole teinds of the parish. The defender alledged, *1mo*, That he had a tack of the teinds from the former Minister as titular, for 700 merks yearly, which was yet unexpired, and therefore could be liable for no further. The pursuer replied, that he offered to prove a greater duty paid since the said tack. It was duplied, that albeit the defender had gratified the former Minister with some more than was due, that could not annul

Use of payment to the minister of more than stated in the tack of teinds, found to constitute the rule in future, independent of the tack.