1629. *March* 18. CAPRINGTON *against* CRAWFURD.

No. 237.

The Laird of Caprington being tacksman of the half teind of the parish of ———, and Mr. Matthew Crawfurd, tackman of the other half of the teind of the said parish, either of them had been in use to uplift the teind of so many roums as extended to their half. Caprington serves inhibition and pursues inhibition against Mr. Matthew's tenants for his half-teind, conform to his tack. Mr. Matthew defends himself by his tack of the other half-teind and possession of the hail teind of such lands as were equivalent to his half of the parish. The allegeance was found relevant, except Caprington would allege that Mr. Matthew bruiked more than his half.

Auchinleck MS. p. 232.

1670. *February* 18. KER *against* The MARQUIS of DOUGLAS.

No. 238.

In a spuilzie of teinds pursued at Ker's instance against the Marquis of Douglas, upon an inhibition served at the kirk-door of the parish where the lands lay, it was alleged, That the defender being in possession of the teinds *per tacitam relocationem* after expiring of his tack, the inhibition should have been executed against him personally, or at his dwelling-place, he not dwelling within the parish at the time of the execution at the kirk-door. The Lords did repel the allegeance, and sustained the pursuit.

Fol. Dic. v. 2. *p.* 429. *Gosford MS. p.* 106.

1673. *June* 10. LADY STRANAVER *against* RENTON.

No. 239.

It was found a good defence against an inhibition of teinds for one year, that a part of the crop was led before it was executed.

The Lady Stranaver being provided by the Earl of Angus, her first husband, to the teinds of some lands belonging to Renton of Billie, did use inhibition in August 1668, and pursued for a spuilzie of the teinds of the crop 1668, 1669, and 1670, and obtained decreet in the absence and sickness of the defender's advocate; whereupon the defender was reponed, and alleged, that he could be only liable for the old tack-duty, though his tack was expired, because he bruiked *per tacitam relocationem*, which was not interrupted by the inhibition as to the crop 1668, because a part of the crop was led and stacked before the inhibition, and yet sentence is taken for the whole crop; and unless the inhibition had been executed before the leading, it was not *debito tempore*, and so is null; 2*do*, The inhibition executed *in anno* 1668, though it had been formal, and might interrupt tacit relocation, yet it could not infer a spuilzie of the crop 1669, unless it had been renewed before the leading of that crop; but the most it could work, was to make the defender liable for the fifth of the rent for teind, according to the King's ease, and not for the tenth part of the crop; 3*tio*, The defender raised a process for valuation of his teind before the Commission, and obtained of them

a power to lead his own teinds, paying therefor the tack-duty that should be found due by the valuation; and albeit it was not renewed for the crop 1670, the defender used diligence to get it renewed, but the Commission sat not. It was answered, That the inhibition was valid, done in due time, and before any of the crop was led, as appears by an instrument produced; and, in fortification thereof, it is offered to be proved by the witnesses inserted, that the whole crop was on the field when the instrument was taken, and that the inhibition, being once served, hath been frequently found to interrupt tacit relocation, and not only to extend to the King's ease, but to the full tenth part of the crop. No. 239.

The Lords found the defence against the inhibition relevant, that a part of the crop was led before it was executed; and the parties being contrary in their allegeances, they preferred the defender, as being more positive, notwithstanding the pursuer's instrument; and found, that if the inhibition was duly served, it did not only interrupt the relocation for that, but for subsequent years; but had not occasion to determine, whether it would only infer the fifth of the rent, or the whole value of the teind, in respect of the warrant of the Commission to lead the crop 1669. And the defender not having failed in diligence, they found the fifth of the rent would only be due in case the inhibition were found good for 1669 and 1670 allenarly; but allowed present probation of the rent before themselves, and would not delay it till the event of the valuation before the Commission.

Fol. Dic. v. 2. p. 429. Stair, v. 2. p. 185.

*** Gosford reports this case:

In a reduction of a decreet for spuilzie of teinds at the instance of the Laird of Billie, upon this ground, That he being decerned for the teinds of the crop 1669, the decreet was unjust, because he had a tack of the teinds unexpired, and referred the knowledge thereof to the pursuer's oath, or otherwise, that he did bruik *per tacitam relocationem;* it was alleged, That they could not allege *tacita relocatio,* because it was interrupted by the inhibition before the corns were led off the ground. It was replied, A part of the corns, before the inhibition, was led, as they offered to prove, and the inhibition ought to have been served before Lammas. The Lords found, That an inhibition served before any corns taken off the grounds, albeit after Lammas, was a sufficient; but, notwithstanding of an instrument, bearing, that the corns were all upon the grounds, they did admit the allegeance, that a part of the corns were led off the ground, to the pursuer's probation. It was alleged, To the crops 1670 and 1671 there could be no spuilzie, because, by a warrant from the Commissioners of Valuation, he was allowed to lead his own teinds, having found caution to pay the valued duty. It was answered, That the warrant being only for the crop 1670, could not defend for the crop 1671. It was replied, That there being no new inhibition, and the pursuer having done diligence to get his teinds valued, could only be decerned for the valued duty, which is the fifth of the stock and teind,

No. 239. valued jointly. The Lords did find, That albeit the warrant to lead was only for one year, yet it defended against the spuilzie for the next year, there being no inhibition served, seeing he had done diligence, and so could only be liable for a fifth of the valued rent.

Gosford MS. p. 331.

No. 240. 1696. *January* 17. ANDERSON *against* FORBES.

Where an inhibition of teind was only, in general, against all and sundry, but neither executed personally, nor at any man's dwelling-house, the Lords refused to sustain the same to interrupt *bona fide* possession, in consequence of a right to the teinds in question, obtained *a non domino*, or to make the party a *mala fide* possessor; though it may be sufficient to interrupt tacit relocation.

Fol. Dic. v. 2. *p.* 429. *Fountainhall.*

*** This case is No. 19. p. 10630. *voce* POSSESSORY JUDGMENT.

1760. *November* 26.

The PRINCIPAL and MASTERS of the UNITED COLLEGES of ST. SALVATOR and ST. LEONARD, in the UNIVERSITY of ST. ANDREW'S, *against* MR. JAMES MONTGOMERY, Advocate.

No. 241.
Inhibition of teinds executed by a party neither in possession, nor having brought any process for ascertaining his right, is inept.

The Principal and Masters of the College of St. Leonard, and afterwards of the united Colleges of St. Salvator and St. Leonard, in the University of St. Andrew's, were supposed to be patrons of certain parishes in the sheriffdom of Aberdeen, and were in use to set leases of the tithes, receive the rents thereof, and dispose of the vacant stipends of these parishes, from the year 1663 downwards.

The title, however, upon which this possession was founded, having lately been called in question by the Officers of the Crown, and it appearing to be a matter of doubt, whether the right to these teinds did truly belong to the College, or to the King, as in right of the Dean and Chapter of the Archbishoprick of St. Andrew's, the matter was laid before the Lords of the Treasury; and, in the mean time, Mr. James Montgomery, his Majesty's Solicitor for the Tithes, in order to prevent tacit relocation, and interpel the use of payment to the College, raised and executed, at the several churches of the said parish, an inhibition of teinds, at the instance of the Crown, against the heritors.

The Principal and Masters of the College complained of this to the Court of Session; and prayed, That the inhibition might be recalled, reserving to the Officers of the Crown to prosecute the Crown's right, as they should be advised.

Pleaded for the College: Inhibition of teinds can only be used by a proprietor, or one who has a proper title to enter into possession. The Crown can have no such title, in the present case, without first prevailing in a declarator of right; which, however, is not yet brought. And the complainers have been in the lawful possession of these teinds for near a century; which is much more than sufficient to found them in a possessory judgment.