

1673. July 27. MONTGOMERY against MONTGOMERY.

No. 32.

The annuity of teind is a burden upon the principal tacksman, unless the contrary be expressed, and divides not betwixt him and the subtacksman, in proportion to the benefit that each has by the teinds.

Stair.

\* \* This case is No. 34. p. 841. *vide* ASSIGNATION.

1674. January 14. JOHNSTON against STUART.

Margaret Johnston, as executrix to her father, who was Minister of Orphar, in Orkney, pursues Robert Stuart for payment of the vicarage teinds of the parish for several years of her father's incumbency. The defender alleged, Absolvitor, because there is no right produced in her father's person of the vicarage, there being nothing produced but a presentation and admission of the Presbytery, in which the vicarage is presented to, and a decret conform, which is only in general against all and sundry, but nothing to instruct that the vicarage was a part of the patrimony of that kirk, or that ever the Ministers there were in possession thereof. It was answered, That the Minister's presentation, and decret conform, doth sufficiently instruct his title; and as to the point of right, he is not obliged to dispute the same with the defender, unless he could allege upon a better right to himself, or that he had made payment to any having a better right; for the right of teinds, both parsonage and vicarage, is constituted *de jure communi*; and as to the party having right thereto, the rule of the common law, allowed by our custom, is, that *decimæ debentur parochæ nisi alterius jus appareat*. It was replied, That vicarage teinds are local and consuetudinary, and different in divers places, and in some none at all due.

No. 33.  
Teinds vicarage *de jure communi debentur parochæ nisi alterius jus appareat*; though no possession instructed.

The Lords found the pursuer's title sufficient, seeing the defender neither alleged a right, or that he had paid to any having a right, neither was there any thing alleged of prescription of freedom.

*Fol. Dic. v. 2. p. 439. Stair, v. 2. p. 251.*

1674. February 13. WATSON against Lord BALMERINO.

The Lord Balmerino having sold the teinds of Woodhill to one Jack, *anno* 1631, with this warrandice, "from his own and his father's facts and deeds, and from all augmentations to the Minister of Barrie, in all time coming;" thereafter, the Minister obtained augmentation; and now the right coming to Watson, by

No. 34.  
Warrandice from Ministers' teinds was found to extend to the relief of an