

1678. July 24. LAIRD OF GRANT *against* M'INTOSH of Comradge.

A PURSUIT for teinds. *Alleged*, An immunity from vicarage, prescribed by not payment for forty years, which takes away *ipsum jus*, vicarage being but like a *servitus itineris*, or *actus*, which loses *non utendo*. THE LORDS found the vicarage totally prescribed *quoad* lint, hemp, milk, and generally all species except calves, lambs, and wool, which commonly paid vicarage in all places; and as to these three, found cessation of payment liberated only for all years above forty. The same had been found before, the Earl of Panmuir and the Heritors of Inveresk, (*see* APPENDIX.); as also, the Parson of Prestonhaugh and his Parishioners, No 61. p. 10761. : And as to roots, it was lately decided between Gibb in Futhesmyre in Aberdeen and Burnet, *voce* TEINDS, where roots and herbs were found not liable in vicarage, unless they had been in use of paying the teind within these forty years; and on the 30th June 1668, the Minister of Elgin against his Parishioners, pursuing for the vicarage of some yeards in Elgin, belonging to the canons of old, it was found they should not pay vicarage, because free forty years back, and past all memory, unless he would prove payment either out of these or any other of the canons' portions within that time to the church, *voce* TEINDS.

*Fol. Dic. v. 2. p. 101. Fountainhall, MS.*

1681. June 16. FRIERLAND *against* LAIRD OF ORBISTON.

ONE Frierland a minister pursues Orbiston for the teinds of certain lands, who *alleged*, Absolvitor, by prescription, he having bruiked the lands free of paying any teind immemorially. It was *answered*, That parsonage teind being established by public law, and not being local or customary by the custom of diverse places, as vicarage is, prescription cannot take away that law, unless it had been universally in desuetude; for albeit some lands be free of teinds, as minister's glebes, and the teinds which did of old belong to the Cistercian order of friars, yet there the common law is taken off by an exception introduced by the canon law, which then was in vigour when the lands were mortified to that order, and so must continue as the rule thereof. It was *answered*, That prescription by the canon law doth take place by immemorial possession; and if prescription do not liberate from the payment of teinds, it will be due for thirty-nine years past; for it being an annual prestation every year, it is taken off by a several prescription of forty years, so that not only the right of teinding should remain, but forty years bygone teinds should be due, albeit the heritor hath *bona fide* enjoyed and consumed these teinds.

THE LORDS found the prescription not to exclude the right of teinding; but found the private interest of this or private ministers to be excluded thereby

No 62.

Found, that lint, hemp, milk, &c. totally prescribe *non utendo* for forty years, also all species of animals, except calves and lambs; as to them and wool, it was found, that cessation of payment liberated only for all years above forty.

No 63.

Parsonage teinds found not to prescribe as vicarage teinds.