

and did indistinctly give a feu of both after the Lateran council, when all feus of teinds were prohibited, and therefore "teinds included" were always given as never having been separated or distinguished from the stock, and so feued out before that council, which, by recent infestment, is ever presumed to have so been, unless the contrary can be proved. The defender alleged, that his right being produced before the act of annexation, the church might have feued both stock and teind, for the Lateran council was never received here; and it appears by the charter, that both stock and teind were always in the same person's hand.

The Lords declared these teinds having a distinct *reddendo*, not to have the privilege of teinds included, albeit feued before the act of annexation, but that they were liable with other teinds for Ministers' stipends.

Stair, v. 2. p. 632.

* * * See Fountainhall's report of this case, Sect. 2. *h. t.*

1679. December 12. The COLLEGE OF ABERDEEN against The TOWN.

The College of Aberdeen pursues a spuilzie of teinds against the Town, who alleged that they could be only liable for their accustomed duty, because the same was settled by rentalled teind bolls past memory, and the visitors of the College ordained that duty to be accepted. It was answered, *non relevat*, for rental bolls is but an ancient use of payment, which may be interrupted; but here the defenders have taken tacks for a definite time, which is expired, and the College have used inhibitions.

The Lords repelled the defence, and found the defenders liable for the accustomed duties before the inhibitions, and for the full duty thereafter, but allowed both parties to be heard, whether the duty should be the fifth part of the rent, or the drawn teind till valuation.

Stair, v. 2. p. 722.

1680. November 16. DRUMMOND against SIR JOHN DALRYMPLE.

Drummond of Carlowrie against Sir John Dalrymple, anent the tack of the teinds of Kirkliston parish: (The President, and his son Mr. James the clerk, and Mr. Rodorick M'Kenzie the clerk, on his father-in-law the Archbishop of St. Andrews' interest, who had set this new tack to Carlowrie, being removed,) "the Lords *nemine contradicente* found the old tack set for three life-rents, and three nineteen years to Dundas of Newliston, because generally they lived to a great age," bearing these words, "to Newliston and his heirs entering and succeeding;" "could not be conveyed by a voluntary right to assignees, but might legally be conveyed and affected by apprising or adjudication, at the instance either of the apparent heir, or of singular successors."

No. 38.

No. 39.

Teinds being of old in use of payment by rentalled bolls, and thereafter a tack for a definite time, which being expired, the heritors were found liable for the use of payment by the tack till inhibition, and for the full value thereafter, and were not liberated by offering the old rentalled bolls.

No. 40.

No. 40.

1681. *January 22.*—In the cause Sir John Dalrymple, and George Young his assignee, (16th November, 1680,) “the Lords found in vicarage teinds, such as calves, lambs, &c. where they are fewer than ten and above five, because a half lamb cannot be paid *salva rei substantia*, and without destruction of the animal, that the value of the half *succedit loco rei* as *surrogatum*, and is due.” See the same decision, 19th January, 1611, Baillie, (See APPENDIX.) Sir G. Lockhart contended it was downright nonsense, and contrary to law, to decern for the value, where *ipsa corpora sine rei interitu* could not be paid, and that nothing was due in that case at all.

Fol. Dic. v. 2. p. 439. Fountainhall, v. 1. p. 115, 127.

1683. *March.* BISHOP OF THE ISLES *against* STEWART of ASCOG.

No. 41.
Conversion of
rental-bolls
into money-
duty.

In a reduction at the instance of the Bishop of the Isles, of a tack of teinds granted by his predecessor Mr. John Stewart of Ascog, upon these grounds:

1st, The same was set for money-duty, whereas the teind was payable in rental bolls, which was a dilapidation of the benefice, contrary to the act of Parliament:

2d, The tack was granted during the standing of another tack for years then to run, when the setter was about to be translated to another Bishoprick:

Answered: It appears by a tack set in the year 1607, a little after the act of Parliament, that the *ipsa corpora* of the teinds were set to the tacksmen, which argues, that no rental bolls were in use to be paid for these teinds, especially there being no rental of the Bishoprick produced, wherein rental bolls are inserted as the teind-duty, albeit the tacksmen have been in use to receive bolls for the teind-duty from the heritors: 2d, The taking of the new tack was a renunciation of the former, which was lawful to any body.

The Lords having examined the heritors of the Isle of Bute, who declared, that the duty in use to be paid for the teinds of the whole Isle, to the Bishop and Ministers, was such a number of bolls, whereof the Bishop had a fourth; the Lords found, That the duty *quoad* the Bishop's part, was in the case of rental bolls, and could not be converted to money, and therefore found the tack null; although, since the year 1607, the tack-duty had always been money, and not victual; and that the present silver-duty was twice as much as used to be paid to former Bishops, and so was not a diminution, but a raising of the rental.

Harcarse, No. 964. p. 274.

1683. *March.* EARL of TWEDDALE *against* TENANTS of PINKIE.

No. 42.

My Lord Tweddale having set the lands of Pinkie, stock and teind, for one duty, the teind being drawn by the Duke of Lauderdale; and the tenants being