

No. 6. 1629. *February 17.* KIRK *against* GILCHRIST.

A Minister having charged the possessors of the lands, the teinds whereof, great and small, were ordained, by the Plantation 1618, to be liable to the Minister, for such proportion of his stipend as was laid on and divided amongst the said lands; and a possessor of some of the lands charged suspending, That he had only taken the grass of the lands from the heritor of the lands, for the summer-pasturage of goods, for a certain silver-duty to be paid therefore to the heritor, and which duty he had paid to him before the charge given to him by the Minister; the Lords found, That albeit the suspender had only taken the grass of the room for pasturing his goods, for a duty to be paid to the master and heritor, and albeit the heritor had right also to the teinds of the land, both great and small, and that he had paid that duty also before the charge to the said heritor, both for stock and teind, yet that the minister might seek payment of that proportion laid on upon the teinds of that land from the suspender, seeing the teinds and intromitters therewith were, by the decret, subject to the minister, the minister proving that the suspender possessed the land the year controverted, and the small teinds of the goods which he pastured thereon, and which he intromitted with, viz. sheep, extending, that year, to as much as the sum wherewith he was charged, and that in respect he had his relief against the heritor to whom he paid the duty for stock and teinds, the payment to whom relieved him not from the minister's charge.

*Act. Gibson.*

*Fel. Dic. v. 2. p. 394. Durie, p. 428.*

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1633. *March 21.* KEITH *against* GRAY and CARMICHAEL.

No. 7.

Found in conformity with Morton against Scot, No. 4. p. 14784.

Mr. Alexander Keith, minister at Strabrock, who being parson thereof, and having set a tack of the teind-sheaves of the said parish to Mr. William Oliphant, for a certain tack-duty, and the said Mr. William having wadset some of his lands, with the teinds thereof, to Mr. James Gray and Thomas Carmichael, who having set back-tacks to the said Mr. William, for payment of 10 for ilk 100 of the sum, for which they received the wadset, both for the stock and teind, the Minister having charged these wadsetters for payment of the tack-duty of Mr. William Oliphant's tack, set to him by the Minister, as they who were addebted therein to him, being a part of his stipend, seeing, by this wadset and back-tack set of the teinds, with the stock, they must be reputed intromitters with the teinds, and they should be subject to the Minister's stipend whoever meddles with the teinds; they suspending these charges, the Lords found, (albeit the reason of suspension bore the contrary to this decision), That the minister had good right to seek the tack-duty, the same being a part of his stipend, from whatsoever

person who had intromitted with the teinds of the parish, if their intromission did extend to as great a quantity of teinds as the duty for which they were charged was; and found the receiving of the wadset, both of stock and teind, and the setting of both back again, made them liable to the Minister, as intromitters with the teinds, to be subject to him in such proportions of their tack-duties as the teinds wadset would extend to, even to the whole duty, if the said teinds did extend to so much; and found, that the said wadsetters might seek their proportionable relief of the payment to be made by them from the rest of the intromitters with the remanent teinds of the parish *pro rata*, and that the minister ought not to be urged to seek the same from ilk one of the parish, nor yet ought to be restricted to seek the duty from his own tacksman; but that he might seek it from whatsoever meddlers with the teinds, his own tacksman specially being become not able to pay; neither was it found sufficient to liberate these defenders, that they alleged they were only naked wadsetters, and received no more for their money, either in stock or teind, but only ten for ilk hundred, and which they alleged they ought to possess, free of any burthen, and that they were *in bona fide* so to contract with the tacksman, being then heritor; which reason was repelled, and the Lords found *ut supra*, That the minister might charge any that has intromitted with as much of the teinds as may pay him, and that he ought not to be molested to charge sundry intromitters therefore, but that he had election to charge whom he pleased, as said is, and the persons charged might seek their relief *ut supra*.

1633. July 23.—In this cause, whereof mention is made 21st March, 1633, the wadsetters alleging, That they ought not to pay the whole duty of the tack to the Minister, albeit the worth of the lands should be more, and exceed the tack-duty, and that they can only be holden to pay the old rental-duty, which their wadset-lands were in use to pay before the setting of this tack, and that the Minister should seek the rest of his tack-duty from the rest of the parishioners, intromitters with the rest of the teinds; and the Minister alleging, That the paying of the old rental-duty was interrupted by the acceptation of the tack by the heritor, author of these defenders' rights; who as he could not oppone this to the minister, no more can they who have right from him; the Lords found this eiked reason relevant, and that these wadsetters, who had received right from the principal tacksman, could not be subject in payment of more of this tack-duty, but only that proportion which these lands paid before the tack of rental-bolls, seeing the same was not interrupted by inhibitions; and found the taking of this tack was no interrupting of the old use of payment against these suspenders, albeit it was sufficient against the tacksman's self.

Act. Stuart.

Alt. Gilmor.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 393. Durie, p. 682, 689.*