No. 27.

year, which did put them *in mala fide*. It was answered, that there having nothing followed upon the charge, but the charger being silent for fifteen years, the tenants *favore rusticitatis* cannot be thought to continue *in mala fide* all that time, to infer double payment, else it might continue for forty years. It was answered, once *in mala fide*, ay *in mala fide*, and that these tenants did still remember and suspect the pursuer's right, appears, because they took discharges, bearing warrandice of the same

The Lords ordained the defenders to produce their discharges, that the warrandice might appear, being loth to decern the tenants in double payment, if the charger could have access to the other Minister, or his representatives.

It was alleged for the present incumbent of Innerkeithing, that in a former double poinding, raised by the tenants, he was preferred to the crop 1665, and in time coming. It was answered, that the said decreet was in absence of Mr. Hugh Gray; and that it was null without probation, for there was nothing produced for the Minister of Innerkeithing, but his presentation and collation, which were but merely general, and nothing produced to instruct, that their teinds were of his parish, or within his benefice. It was answered, that he was secured by the act of Parliament anent decreets of double poinding.

The Lords found that what the Minister of Innerkeithing, had uplifted, by virtue of that preference, the act of Parliament would secure him thereanent, but found he had no right as to the future.

Stair, *v.* 1. *p.* 462,

1667. *November* 26. DALZIEL *against* ———.

No. 28.
Extent of the Minister's right in consequence of his presentation.

The Minister of Prestonhaugh, Mr. John Dalziel, pursued for the teinds of Lanton, upon his presentation to the said kirk and teinds, parsonage and vicarage. It was alleged, No process, unless he were presented to be prebendary, seeing the said kirk is a member of the collegiate kirk of Dunbar, and cannot be made appear to be dissolved, and erected in a several rectory.

The Lords found, That being presented to be Minister at the said kirk, and to the teinds, which are the patrimony of the prebendary, it is equivalent as if he were presented prebendary; and when there is a presentation to a kirk, which is a parsonage, and to the teinds, the Minister will have right, though he be not presented to be rector or parson.

Dirleton, *No.* 112. *p.* 47.

1669. *February* 24.
The EARL of KINCARDIN *against* The LAIRD of ROSYTH.

No. 29.
Right of teinds not affected by a decree of Par-

The Earl of Kincardin pursues the Laird of Rosyth for the teinds of his lands, to which the pursuer has right. The defender alleged, That he had obtained a decreet of the High Commission for Plantations against the Earl, whereby they

decerned the Earl to sell and dispone these teinds, for a price mentioned in the decreet, being about nine years purchase thereof, and therefore the pursuer cannot have right to the teinds themselves, but only to the annual-rent of that sum, which was the price. The pursuer answered, That he opponed the decreet produced, which did not, *de præsenti*, adjudge the teinds to the defender, but decerned the pursuer to sell them to him, upon payment of the said price, which can give no right to the teinds till the price be paid, or at least offered, which was never done.

No. 29. liament ordaining the titular to sell them at a certain price, that price never having been offered.

The Lords repelled the defence, in respect of the reply.

Stair, v. 1. *p.* 612.

1671. *July* 18. EARL of HUME *against* The LAIRD of RISLAW.

No. 30. Effect of tacit relocation in teinds.

The kirk of Fogo having been a kirk of the Abbacy of Kelso, when the same was erected; this kirk was reserved in favours of the Earl of Hume, and disponed to his predecessors; whereupon he pursues the Laird of Rislaw for the teinds of his lands, as a part of the teinds of Fogo; who alleged absolvitor, because his predecessors obtained tack of their teinds from the Minister of Fogo, as parson thereof, which tack, though it be now expired, yet he bruiks, *per tacitam relocationem.* The pursuer repled, that his tacit relocation was interrupted by inhibitions produced. The defender answered, that the inhibitions were only at the instance of the Earl of Hume, who was never in possession of his teinds, whose right he neither knew nor was obliged to know, and the Earl ought to have used declarator against the defender, and the parson of Fogo his author, which was the only habile way, and not the inhibition.

The Lords sustained the process upon the inhibition, and restricted the spuilzie to wrongous intromission, unless the defender could propone upon a right in the person of himself, or his author, that could either simply exclude the Earl's right, or at least give the defender or his author the benefit of a possessory judgment, and put the Earl to reduction or declarator.

Whereupon the defender alleged, that the parson of Fogo was presented by the King, as parson of Fogo, and did so bruik by the space of thirteen years, which was sufficient to defend him, *in judicio possessorio.* It was replied, first, that the Minister cannot pretend the benefit of a possessory judgment, because his possession was not peaceable, in so far as it was within the thirteen years it was interrupted by the pursuer's inhibitions. The defender answered, that he offered to prove thirteen years possession, at least seven years peaceable possession, before any inhibition, which is sufficient; for as thirteen years possession make a presumptive title, decennalis et triennalis possessor non tenetur docere de titulo; yet where the defender produces a title, viz. a presentation as parson, he is in the common case of a possessory judgment upon seven years possession. The pursuer further replied, that albeit the seven years were peaceable, and sufficient for a possessory judgment; yet the defender cannot maintain his possession by