

No. 2. but found, that Sir John Preston, having comprised, and been infeft, ought to pay the stipend, sicklike as Sir John Ker should have done, in whose right he succeeded; seeing, by his comprising, and right following thereon, he might have intromitted by law; and if he was debarred by any other who intromitted, he had, by virtue of his rights, a competent action of spuilzie against the intromitters.

Act. Lawtie.

Clerk, Scot.

Durie, p. 40.

1623. June 20. JOHN BALFOUR *against* GILBERT KER of Lochtour.

No. 3.

Every intromitter of teinds is liable for the stipend to the extent of the whole quantity of his intromission.

Mr. John Balfour, Minister at Hettam, charged Gilbert Ker of Lochtour as intromitter with some of the teinds of the parish, who were decerned to pay the constant stipend, and had obtained prorogation of their tacks; and if the suspender had any intromission, it was by a wadset of his teinds, redeemable for 5000 merks; and that his intromission would not equal his annual-rent, besides that his wadset before the decret of the Commissioners of Parliament. The Minister answered, That, by his decret, all the teinds of the parish, and all the intromitters therewith, were subject to his payment, and he had place to charge any intromitter. I reasoned, That the minister had his direct action against the principal tacksman, who was *nominatim* decerned to pay him; and that it was lawful to him to set tacks for small duties, which the minister could not quarrel, so long as the principal tacksman paid him; and that the Minister should first have discussed the principal tacksman, before he charged any intromitter, specially having intromitted by a lawful right made to them who had power, by virtue whereof he had been in possession divers years. It was farther eiked by the suspender, That he should be charged only *pro rata*, according to the proportion of his intromission, and the rest of the parish for their intromission; which was also repelled, and the minister's reply sustained, bearing, that Lochtour had intromitted with as much as might pay his stipend, and that Lochtour might have his relief against the rest. I affirmed, that he had no relief but against the granter of the wadset, who was a dyvour, and that many others of the parish might perchance have intromitted without title, against whom he had no action, they not being bound to him, and he not having right to the tack of their teinds, nor any assignation from the principal tacksman. Notwithstanding whereof, the Lords found him debtor *in solidum* for the whole quantity of his intromission.

*Fel. Dic. v. 2. p. 394. Haddington MS. N. 2863.*

1625. July 6. MORTON *against* SCOT of Harden.

No. 4.

Stipend is a burden upon the teind, and

In a suspension betwixt Mr. Robert Morton, minister at Etrick, and Sir William Scot of Harden, who was charged by the Minister to pay the stipend modified to