

Teinds are rated in valuations at one-fifth of the rent. The same rule is adopted in judicial sales, and other cases where the amount is not precisely ascertained, and it may fairly be so in the present case; Bank. b. 2. t. 8. § 150. 179. 181.; Kilkerran, 22d June 1738, Sinclair against Groat, *voce* TEINDS; 8th July 1748, Smith against Oliphant, *IBIDEM*. At all events, the valuation in 1784 must regulate the rights of parties since its date.

The Lord Ordinary had repelled the plea of the quinquennial prescription as to the ann and vacant stipend paid within the five years; but sustained the defence against payment of the other arrears prior to the inhibition; and found, "That the decree of valuation in the 1784 must be the rule for stating the worth of the teinds."

Upon advising a petition for the defenders, with answers, the Court thought the plea of prescription clearly groundless. This opinion, however, was not founded on the lunacy of the Marquis, but on his tutor being to be considered as *negotiorum gestor* for the heritors, when he paid the ann and vacant stipend. On the other point, it was observed, that the effect of the inhibition in the present case had been lost *mora*; that no arrears could be demanded prior to 1784, from the impossibility of fixing their amount, but that the valuation must be the rule from its date.

THE LORDS, "in respect the pursuers did not follow out their inhibition of teinds executed in 1762, and that they did not now offer to prove the annual value of the teinds previous to the decret of valuation in 1784, assolizied the defenders from the claim made by the pursuers for the teinds intromitted with by the defenders and their predecessors previous to the said decret, and discerned and adhered to the interlocutor of the Lord Ordinary reclaimed against, *quoad ultra*; and remitted to the Ordinary on the Bills, in place of Lord Swinton, to proceed and determine in the cause as to his Lordship should seem just."

Lord Ordinary, *Swinton*. Act. *Williamson*. Alt. *W. Baird*. Clerk, *Pringle*.
D. D. *Fac. Col. No 113. p. 257.*

S E C T. IV.

Bargains about Moveables.

1683. January —. WHITE against SPENCE.

FOUND that a bargain of victual not constituted *scripto* prescribes in five years, *quoad* the manner of probation by witnesses; and that it is not relevant to prove the delivery of the victual *juramento*, unless it be likewise referred to oath, that the price is resting owing.

Fol. Dic. v. 2. p. 118. Harcarse, (PRESCRIPTION.) No 764. p. 216.