

No. 155. The Lord Ordinary found, "That, in respect the pursuer has not obtained protestation in the process of valuation of teinds, raised by Sir John Sinclair, he is not entitled to draw the *ipsa corpora* of the teinds of the defender's lands; therefore assoilzies the defender, and decerns."

Upon a reclaiming petition and answers, the Court adhered to the Lord Ordinary's interlocutor, "so far as it finds that the pursuer is not entitled to draw the *ipsa corpora* of the teinds of the defender's lands." But it was upon a different medium. The act 1693 was not thought to apply to this case, as there was no warrant putting the heritor in possession of his teinds, on his pursuing the action of valuation; but then, on the other hand, there was no law for ouing the heritor of the possession of his teinds. It was even questionable if, in such a case, there is occasion for a warrant. The heritor becomes defender, and is entitled to hold the possession; and it is the genius of our law, that the heritor should draw his own teinds. Indeed, if there should be any *mora* on his part, the titular may have relief from the Court.

Act. *A. Lockhart.*Alt. *M^cQueen.*Clerk, *Kirkpatrick.**Fac. Coll. No. 36. p. 95.*

1772. July 22.

CHARLES FULLERTON of Kinnaber, *against* The NEW COLLEGE OF ABERDEEN.

No. 156.

Deductions
in a valuation
of teinds.

In this case, the Court upon advising memorials *hinc inde*, "sustained the deductions following, viz. of the rent of the Miln-eye of the over-miln of Kinnaber; the wauk-miln, snuff-miln, and ferry-boats on the north water of Esk, and houses, yards, and smiddy, possessed by David Scot, smith; and also of services and kains paid in kind; and likewise the butter, in respect the quantity is so small," being half a stone.

Act. *Al. Gordon, junior.*Alt. *Jo. Douglas.*Reporter, *Hales.**Fac. Coll. No. 21. p. 60.*

1773. August 4.

DUNCAN CAMPBELL of Glendaruell, ANGUS FLETCHER of Dunans, and Others,
against The OFFICERS of STATE and Others.

No. 157.

The rule of
dividing a
cumulo valuation
of the
teinds of
lands in the
county of
Argyle, now
belonging to
different pro-

The teinds of the parish of Kilmoden, or Glendaruell, and of the adjacent parishes of Innerchelane and Strachur, were valued in the year 1629 by the sub-commissioners for the Presbytery of Argyle.

With regard to the lands contained in the report of the sub-commissioners, so far as now belonging to the parties in the present question, the use of payment to the Minister, as to some of these lands, was within the value of the teind, as ascertained by the said report. This was the case as to the lands of Glendaruell,

which, at the time of that valuation, belonged to the family of Argyle, and now to two of the pursuers, Duñcan Campbell and Angus Fletcher. Other lands, which were valued jointly, as then belonging to one proprietor, but now split, had been in use to pay to the Minister to the full extent of the *cumulo* valuation. A third class of lands in the above parishes comprised in the report, and now belonging to some of the pursuers, were separately valued, and the use of payment had been agreeable to the valuation.

In these circumstances, the pursuers brought an action for obtaining approbation of the reports of the sub-commissioners, in so far as regards the teinds of their lands; and having moved the Court to approve of the report, and to divide the *cumulo* valuations, a doubt occurred as to the proper rule of division in this case.

Upon this point it was stated by the pursuers, That, where the use of payment out of the different lands valued *in cumulo* has made up the whole of the valuation, the Court have been in the practice of ascertaining the teinds of the different proprietors by this use. But as, in the present case, the quantity of teind paid out of the lands of Glendaruell falls short of the *cumulo* valuation in the report, the pursuers were doubtful how far the use of payment could be a rule for splitting the whole teind: That the merk-lands have been taken for the rule in a late case from that part of the country: That, in the county of Argyle, the land-tax was, till of late, proportioned among the different heritors by this rule; and that, in a like case relating to the teinds of Kintyre, where it appeared, that the family of Argyle, in feuing out lands which paid their teind jointly, had laid the teinds upon these feus in proportion to the merk-lands, the Court, while they approved of the valuation by the sub-commissioners, proportioned the teinds of the several proprietors by the same rule. These circumstances, the pursuers contended, were a sufficient ground for adopting that rule as to lands in the shire of Argyle, as not only easy and simple in itself, but agreeable to the customs of the country, which show its being generally understood, that the merk-lands, by which they are described in their old rights, bear a pretty equal proportion to the present value of estates.

The Lords decerned in the approbation of the report of the sub-commissioners of the Presbytery of Argyle, so far as concerns the valuation of the respective pursuers, their lands libelled, in common form; "and ordain the *cumulo* valuations to be divided among the present proprietors as follows; viz. Those who have been in use of paying the full valued teind, according to the use of payment by the several pursuers; and those who have been paying below the valued teind, according to the merk-lands which each heritor has in property."

Act. B. W. M^oLeod.

Teind Clerk.

Fac. Coll. No. 85. p. 213.

No. 157.
 priors, fixed to be, according to the use of payment, as to those who have been in use of paying to the Minister the full valued teind, and as to those who have been paying below the valued teind, according to the merk-lands which each heritor has in property.