

No. 83. administration of them, this must follow from a grant of the patronage itself. Wherever, therefore, along with a right of patronage, tithes are particularly conveyed, the just presumption is, that the grantee was to have a right of titularity as well as of patronage. But where the tithes are conveyed, as in this case, it seems scarcely possible to doubt the intention of the grant. If such an interest in the tithes only was meant, as is merely collateral and incident to a right of patronage, the grant must have been in such terms as these, "Cum advocacione parochiæ, et decimarum," whereas the words "Cum advocacione, decimis," &c. or "Cum decimis," these two expressions being precisely of the same import, clearly denote a right of tithes distinct from the patronage. The latest decisions are agreeable to this reasoning; while, in the only one that can be founded on by the opposite party, the point, as appears from looking into the printed papers, seems to have undergone little or no discussion.

The Lords unanimously found, That Sir John Scot was titular as well as patron, and therefore entitled to *nine* years purchase of the tithes.

Act. Wigt.

Alt. Tait.

C.

Fac. Coll. No. 214. p. 450.

1793. January 29. M^rFARLANE against ———.

No. 84.

It was questioned, Whether the creditors of an heir of entail, who had purchased the teinds at six years purchase from the patron, after succeeding to the entailed estate, were bound to accept of the six years purchase from an after heir of entail. The Lords found they were bound to do so. See APPENDIX.

Fol. Dic. v. 4. p. 359. D. M. S.

1793. February 27.

JOHN SCOTT and Others, against The COLLEGE of GLASGOW.

No. 85.

A titular has no right to infeftment in the lands in security of the valued teind.

In a valuation of teinds, where the value of lands in the natural possession of the proprietor has been

John Scott and others are proprietors of certain lands kept by them in their own natural possession, the teinds of which belong to the College of Glasgow, who had long been in the practice of letting leases of them to the heritors for payment of a victual duty. The heritors, however, having brought processes of valuation, a proof of the rental was allowed in common form. The witnesses examined estimated the value of the lands entirely in money, without ascertaining their worth in a victual rent. When the proof was reported, it appeared that a fifth of the proved money-rent would exceed in point of value the victual teind-duty formerly paid. At this stage of the process the College insisted, 1st, That notwithstanding the money valuation, they should be found entitled at least to the accustomed quantity of victual teind, taking only the excess in money:

2dly, That the pursuers should be ordained to infest them in the lands in security of the valued teind-duties. In support of the *first* point, they

Pleaded: The act 1633, C. 17. was introduced in order to remove the inconveniencies arising from the former practice of allowing the titular to draw his tithes, and as making a violent encroachment on the common law, must be strictly interpreted. It contains no provision for making teinds payable in money in place of grain, and therefore every consideration, whether drawn from their original nature, or from the purposes to which they are still subservient, seems strongly to recommend a valuation in victual in all cases where the lands are not let to tenants for a money rent, Neither should the accidental circumstances of the lands in question having been valued in money make any difference. It would have been an easy matter for the College to have desired the witnesses to say what the lands were worth yearly in victual as well as in money. And they are still willing that the valuation in money shall be converted into grain at the average of the fiars for such number of years back as the Court shall think reasonable.

Answered: It is true, that the act 1633, Chap. 17. does not enact that teind-duties shall be paid in money; but as little does it give titulars a right to exact delivery of them in grain. But, from the express provision made in that statute for the sale of teinds at a money price; and from its spirit and intention, which was to produce an immediate and still increasing disparity between the actual teind and the valued teind-duty, there is the strongest ground to conclude, that valued teinds were meant to be exigible only in money. At any rate, all that the college can demand is, "a fifth part of that rent which the lands are truly worth, and might have paid had they been rented to a tenant;" Erskine, B. 2. Tit. 10. § 32. *in fine*. This, it is clear from the proof, they have got. But, if their present demand of converting part of the valued money-duty into victual at the fiars were granted, they would evidently get more, as the fiars are always lower than the real worth of the grain.

The Court, without any reasoning on the subject, repelled the claim.

In support of their *second* claim, the College

Pleaded: While the titular drew his teind-sheaves, he would take them as soon as they were ready. But when a fixed teind-duty came to be substituted in their place, he would not attend so accurately to the progress of each heritor's harvest as to enable him to get his valued teind before the corns were removed from the ground. Accordingly, by the act 1633, Chap. 17, the heritors is ordained to "give security" for its payment. Now, by this security, nothing else can be meant but infestment; and so it is explained by Mackenzie, B. 2. Tit. 10. § 16.; and Erskine, B. 2. Tit. 10. § 38.

Answered: The act 1633, Chap. 17. leaves it entirely with the Commissioners of Parliament to determine what security shall be given to titulars for their valued teind-duties. It consequently still remains with the Court to make such provision in that respect as they shall judge proper. It would certainly, however, be a great and unnecessary hardship on small proprietors to be put to the expense of exped-

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ascertained in money by the evidence of the witnesses adduced, the titular cannot afterwards insist that any part of the teind shall be converted into grain.

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ing infestments for the security of titulars. Indeed, from the style of similar enactments in the act 1633, Chap. 19, and in the decrees-arbitral of King Charles I. it seems clear, that the Legislature never intended that the titular should be secured in this manner. See also Mackenzie's Observations on 1633, Chap. 15. Besides, the statute 1633, Chap. 19. puts titulars and Ministers on the same footing; so that, were the claim of the College to be sustained, the clergy might with equal justice insist for infestment on the lands of every heritor who pays them stipend. But, in fact, neither require any additional security, as at present both are put in possession of a decree upon which they can raise every sort of diligence necessary for their safety.

It was observed on the Bench, that although this second claim seemed to derive some support from the act 1633. c. 17. yet as it appeared unnecessary, and was unprecedented. it ought not to be granted.

The Court also repelled this claim.

Act. Solicitor-General, Morthland.

Alt. Jo. Millar, jun. Davidson.

R. D.

Fac. Coll. No. 38. p. 76.

1794. May 14.

SIR ALEXANDER RAMSAY IRVINE *against* The Honourable WILLIAM MAULE.

No. 86.

An heritor may pursue a sale of his teinds, although they have been valued more than two years before.

When an heritor brings a scale of his teinds already valued in victual, the grain is converted at the medium of the fair prices of the county, for seven years preceding.

George Dempster, in the year 1772, brought a process of valuation and sale of the teinds of certain lands in the county of Forfar, in which the Earl of Panmure, the titular, was called as defender. The teinds were accordingly valued, but the conclusion for selling them was not at that time insisted in.

Sir Alexander Ramsay Irvine afterwards bought these lands; and, in the year 1792, he, with a view to purchase his teinds, wakened the former action, and called Mr. Maule, the Earl of Panmure's representative, as defender, who

Pleaded, *imo*, As the teinds were valued in the year 1772, the pursuer is not now entitled to insist for a sale of them. By the statute 1633, C. 17. confirmed by 1633, C. 19. it is enacted, "That each heritor in the kingdom being willing to buy his owne teind from the titulars having power to sell the same, shall be obliged to buy the teinds of his own lands," &c. "and to pay the prices foresaid betwixt and the terme of Martinmasse, in the yeare of God 1635 yeares, where the valuation of the teinds is made and approved, of before the date hereof; and where the same is not yet valued, and approved within the space of two yeares after the same be valued and approved by the Commissioners to be appointed by his Majestie and his estates, to that effect. After the expiring of which time, his Majestie and estates declare, that the said titulars shall not be compelled to sell the same, except they doe it of their own good will and consent."

In several after statutes, this limitation was extended from two to three years, (1661, C. 61. 1663, C. 28. 1672, C. 15. 1685, C. 28. and 1686, C. 22.) which shows it to have been the opinion of the Legislature, that some restriction of this