

Even when the heritors have no such defence as occurs in the present case, it is always very difficult for the titular, in an action for arrears, to ascertain the extent of his right. It is incumbent on him to establish what was the actual amount of the teinds each year; for he is not entitled to substitute, in its place, those calculations and conversions which have been introduced in favour of heritors, in processes of valuation.

The Lords unanimously "Found it unnecessary, *in hoc statu*, to determine whether the respondent (pursuer) is titular or patron of the parish of Ancrum: Found the petitioners (defenders) liable to the respondent in payment of the teinds of their lands from and after the date hereof; but sustained the defences in so far as regards bygone teinds previous to the date of this interlocutor.

Lord Ordinary, *Henderland*. Act. *Tait*. Alt. *G. Fergusson*. Clerk, *Pringle*.

D. D.

*Fac. Coll. No. 161. p. 368.*

1797. February 15.

MARY, &c. STEWARTS, *against* SIR JOHN SCOTT and Others.

Sir John Scott having prevailed in an action for having it declared, that he had right to the teinds of the parish of Ancrum, (See the case above.) Miss Stewarts, heritors in that parish, brought a sale of their teinds, in which Sir John demanded nine years purchase as titular, and produced a Crown charter conveying certain lands to him, "cum advocacione, donatione, et jure patronatus ecclesie et parochie de Ancrum, decimis rectoriis et vicariis ejusdem."

The pursuers, on the other hand, maintained, that this clause made him only patron of the parish, and as such entitled only to six years purchase of the teinds.

The circumstances of the case, and arguments of the parties, are stated at length in the report of the decision in the declaratory action.

Upon advising memorials, it was observed, that the decision, 4th December, 1748, Marquis of Annandale against Irving, No. 64. p. 15661. has not been since followed.

The Lords unanimously "found Sir John Scott has right to the teinds of the pursuer's lands libelled, as titular, and as such is entitled to nine years purchase."

Act. *Geo. Fergusson*.

Alt. *Tait*.

D. D.

*Fac. Coll. No. 18. p. 41.*

No. 87.

No. 88.

A clause in a charter from the Crown conveying lands to a person, "cum advocacione, donatione, et jure patronatus ecclesie et parochie, decimis rectoriis et vicariis ejusdem," makes him titular of the teinds.