

of his predecessor, the report, upon the principle of the decision, 4th February 1795, Fergusson against Gillespie, affirmed on appeal 14th February 1797, No. 168. No. 164. p. 15768. could not be supported.

The pursuers answered: Reports of sub-commissioners do not narrate the whole proceedings, but merely their result; and, therefore, from its not being expressly stated, that the Minister was present or cited, it does not follow that he was not; on the contrary, as the report in general proceeds on a proof, the presumption is, that all parties interested were present, or cited. Indeed, the presence of the procurator-fiscal, for the presbytery, made that of the Minister unnecessary.

Many similar reports have been examined, and no instance has been discovered, in which the report bears, that the Minister was cited. This case differs materially from that of Fergusson. These two estates were valued within a few months of each other. The report as to one of them bore, that the patron, heritor, and Minister, were present. The report as to the other, mentioned the presence of the two former, and that they had agreed upon the valuation; but said nothing of the presence of the Minister; and, therefore, from the difference of expression used in the two reports, it was presumable, that the Minister had not been present, or a party, at the second. Consequently, as the value, in that case, was fixed of consent, and without a proof, it could not be binding on the Minister or his successors.

The Lords, on the grounds stated for the pursuers, repelled the objection.

*Act. Ar. Campbell.*

*Alt. J. W. Murray.*

*Fac. Coll. No. 68. p. 158.*

1799. May 22.

LORD GRAY and JOHN ANDERSON *against* ARCHIBALD DUNBAR, and Others.

Lord Gray and John Anderson brought an approbation of a report made by the Sub-commissioners of the Presbytery of Perth, in 1635, with regard to certain lands belonging to the pursuers, in the parish of Kinnoull.

By the report, the lands were valued in grain. Mr. Archibald Dunbar, the Minister of the parish, stated various objections to the original validity of the report; and further insisted, that it had been derelinqushed by excess of payments to the Minister of the parish, as fixed, first by a locality in 1650, and still more by another in 1775, in neither of which had the valuation been founded on, or attended to.

It appeared, that if the stipend payable by the pursuers, in terms of the locality 1650, were converted into victual, at £.100 Scots the chalder, which, by act 1649, C. 45. the High Commission were authorised to do, there was no excess of payment by the first locality.

The pursuers, however, admitted, that, converting some wheat payable by them by the locality 1775 at £.9 Scots the boll, and the meal at £.100 Scots

No. 169.  
Dereliction  
of a sub-valuation  
inferred  
from over-  
payment to  
the Minister,  
though it had  
not been con-  
tinued for  
forty years.

No. 169. the chalder; the annual payments made by them since its date considerably exceeded their valuations. But they brought a reduction of that locality; and contended, *1mo*, That, in 1775, they were ignorant of the report of the Sub-commissioners, and that nothing short of a contrary use of payment for forty years could deprive them of their right to found on it; 15th December, 1773, Commissioners of Annexed Estates against Menzies, No. 15. p. 7860.

*2do*, That there had been no excess of payment, provided the grain be valued at the selling price since 1775, which, and not the converted prices, ought to be the rule, upon the same principle that, in late instances, the former had been adopted in fixing the prices payable by heritors to titulars in sales; 14th May, 1794, Ramsay Irvine against Maule, No. 86. p. 15698.

Answered: *1mo*, The conduct of the pursuers or their predecessors can be accounted for only from a deliberate intention to abandon their valuations, to which they must have been sensible there lay valid objections, which could easily have been substantiated, if the report had been founded on at an earlier period; and this, even without the aid of prescription, is sufficient to prevent the approbation.

*2do*, The legal conversion, and not the prices which grain may have accidentally borne since 1775, must be taken as the measure of the burden imposed by the locality.

The Lords, (20th June, 1798,) upon advising memorials, assoilzied the defenders.

And the cause having again come before them, upon a reclaiming petition, with answers and replies, it was

Observed: A party pleading dereliction of a sub-valuation has no occasion to go back for forty years. The right to have a report approved of, like the right of action on bills before the sexennial prescription was introduced, may be lost by circumstances, independently of the long prescription, which, indeed, does not at all enter into a question of dereliction. The claim of the pursuers is barred by the locality in 1775.

The Lords unanimously "adhered."

*Act. Solicitor-General Blair, Robertson.*

*Alt. H. Erskine, Jo. Clerk.*

*D. D.*

*Fac. Coll. No. 125. p. 285.*

1799. February 20.

LADY CHRISTIAN GRAHAM, and her Commissioners and Factor, *against*  
CATHARINE PATE, and Others.

No. 170. The claim of a titular, for arrears of teinds, sustained to the extent of the valued teinds, from the date of a valuation obtained twelve years before, but rejected as to prior arrears, the precise amount of which could not be ascertained, although