

The objectors have, by their feu-charters, obtained a permanent heritable right to their teinds, very different from the temporary right of a lessee, and, for that reason, their teinds have been allocated only *secundo loco*.

No. 32.

For these advantages they have given a valuable consideration; and it cannot affect the rights of parties, whether it consisted in a price instantly paid, in a bond payable at a future period, or, as in the present case, in an equivalent annuity payable out of the lands; Erskine, B. 2. T. 10. § 38. See also Forbes on Tithes, p. 296.

The Lord Ordinary pronounced the following interlocutor: "In respect it is admitted, that part of the duties paid by the heritors of the parish of St. Andrew's and Deerness to Sir Thomas Dundas are teind-duties, finds, That these teind-duties are first to be allocated along with the other free teinds of the parish."

The Court "adhered" by two consecutive judgments.

Lord Ordinary, *Stonefield*.

For the Objectors, *Honyman*.

Alt. *W. Robertson*.

*D. D.*

*Fol. Dic. v. 4. p. 301. Fac. Coll. No. 27. p. 55.*

\* \* Similar judgments were pronounced in a case of the same kind, occurring between Mr. Grahame of Kinross and his Vassals. See APPENDIX.

1793. February 13. WILKIE against HERITORS of CULTS.

No. 33.

Where the teinds are exhausted, the Court cannot award an allowance for communion-elements out of the stock.

*Fol. Dic. v. 4. p. 301. Fac. Coll.*

\* \* This case is No. 5. p. 2493. *voce* COMMUNION-ELEMENTS.

1793. February 27. JOHN GORDON against The EARL of FIFE and Others.

No. 34.

The Reverend John Gordon, Minister of the parish of Strathdon, obtained, without opposition, an augmentation to his stipend, which was modified in grain.

The heritors, having afterwards discovered that almost the whole of their teinds were valued in money, in a reclaiming petition,

Pleaded: The Clergy were parties in the submission to Charles I. By his decretal, and by the various statutes made for enforcing it, it is declared, that valuations made under its authority, in which the Minister of the parish, and, in case of a vacancy, the Presbytery are necessarily defenders, shall never afterwards be called in question.

The teinds, in this case, have been valued in money; and to oblige the heritors

When the teinds are valued in money, an augmentation cannot be modified in grain.

No. 34. to pay them in grain, would be to alter both the nature and extent of their payment.

Answered: Valuations in money are exceedingly unfavourable to the Minister, who, though nominally a party in the action, from the temporary nature of his right, seldom thinks it worth while to appear. The Court, however, will not suffer the interest of the benefice to suffer from his inattention; 30th November, 1791, Minister of Glenluce against the Earl of Galloway, (not reported; see APPENDIX).

Observed on the Bench: In later cases, the point has been settled in favour of the Heritors.

The Court altered the former interlocutor, and modified the stipend in money.

Act. *W. Robertson.*

Alt. *W. Murray.*

*D. D.*

*Fol. Dic. v. 4. p. 300. Fac. Coll. No. 39. p. 79.*

1795. June 3.

ANREW SKENE and JOHN ELMSLIE *against* The OFFICERS of STATE and Others.

No. 35.

Teinds vested in the Crown, in right of the Bishops, cannot be allocated in payment of stipend, till those heritably possessed by the proprietors of the lands are exhausted.

The Minister of the parish of Daviot having obtained an augmentation of his stipend, the Officers of the Crown gave in a scheme of locality, in which the teinds of certain lands were localled upon, *ultimo loco*, in respect they formerly belonged to the Bishop of Aberdeen, and were now in the hands of the Crown, in his right.

To this scheme Messrs. Skene and Elmslie, heritors in the parish, who had heritable rights to their teinds,

Objected: Although, in consequence of the act 1693, C. 23. teinds formerly belonging to Bishops cannot be purchased while they remain with the Crown, yet neither that nor any other statute has conferred upon them any privilege in point of allocation.

It is well known, that the chief cause for passing the act in question was, that, at its date, the Legislature had not wholly given up the idea of establishing Episcopacy in Scotland; but now, when the reason of the enactment no longer exists, there can be no ground for extending the advantages conferred by it. Accordingly, none of the writers on our law have said, that Bishops' teinds possess the privilege here contended for; and Erskine, B. 2. T. 10. § 4. seems to entertain the opposite opinion. See also 9th February, 1734, Don against Ker, (not reported; see APPENDIX); 16th July, 1788, Officers of State against Christie, No. 31. p. 14817.

Answered: Bishops being a superior order of Ministers, the tithes appropriated to their support could not be allocated for the maintenance of any inferior churchman, until those belonging to laymen were exhausted. And it was the object of the act 1693, that the tithes of Bishops should be possessed by the Crown, with every privilege which they formerly enjoyed, and particularly that now