

judgment in the case of Lamington, may very well affect and regulate future allocations : but it would be dangerous to allow it to operate, so as to alter localities previously fixed ; by which, as in this case, the other heritors have acquired certain privileges, by which a proportion of victual-stipend is laid upon those who now wish to free themselves, and which burden the other heritors must now bear, if they are relieved from it. (No. 38. p. 14827.)

The court adhered to the judgment of the Lord Ordinary, by refusing two reclaiming petitions without answers ; as the option given to heritors to surrender their whole teind must always be available to them, at whatever time they choose to adopt it ; for the Court of Teinds never can encroach upon the stock, whether by a payment in money or grain.

Lord Ordinary, *Dunsinnan*.

For Petitioner, *Reid*.

Agent, *Jo. Ker*, W. S.

F.

*Fac. Coll. No. 226. p. 513.*

\* \* Since this judgment was pronounced, it has often occurred, that heritors have chosen to surrender their teinds to the minister. The competency of doing so was again disputed in the case of Wallace, minister of Nenthorn, against William Roy of Nenthorn. In that case, which was decided 21st February 1810, the Court held the point to have been settled by the above report.

*Jas. Moncrieff*, Counsel, and *Balderston and Scott*, W. S. Agents, for Wallace.  
*John Reid*, Counsel, and *W. Keyden*, W. S. Agent, for Roy.

1806. *February 5.*

SCOTT *against* ST. MARY'S COLLEGE, ST. ANDREW'S

THE parish of Craig is composed of two parishes which were united in 1618. The New College of St. Andrew's obtained a right to the teinds of one of these parishes, viz. Craig ; but have no right to the teinds of the other parish Dunninald, of which the Crown is titular. The stipend is paid out of the teinds of the two parishes proportionally, according to their respective rentals ; and this was by decret of the commissioners, declared to be the rule for allocating future augmentations.

David Scott of Dunninald was proprietor of lands in each of these parishes, and he raised a process of valuation of his teinds, in which he called the Crown, the New College of St. Andrews, and the Minister of the parish, as defenders. In the course of the process, the pursuer brought forward certain claims of deduction from the amount of the proven rental of his lands in the parish of Dunninald, to which the New College stated objections.

The pursuer maintained, that the College had no right to be heard in objections to the valuation of the lands of Dunninald, of which parish they were

No. 13.

No. 14.

The titular of one of two conjoined parishes, being patron of both, is entitled to state objections to the valuation of teinds in the other.

Deductions from rent allowed to the proprietor in valuing his teind.

No. 14. not titular; that they were called merely as the titulars of the old parish of Craig, and that they were entitled to state objections to the valuation of the teinds of that part of the united parish only. It is not sufficient for a party to shew, that he has a remote or contingent interest in a valuation, to entitle him to appear in that process and state objections. Every heritor in the parish, whose teinds are not valued, has such an interest, yet he has no right to appear; Erskine against Abercromby, 5th March 1800, No. 8. *supra*. Neither is it an objection to the decree of the sub-commissioners, that the minister was not called as a defender; Macneil against the ministers of Campbellton, 3d June 1801, No. 12. *supra*.

It was maintained upon the part of the College, that although they had not so great an interest in preventing improper deductions from teinds in the parish of Dunninald, of which they are not titulars, as from teinds in the parish of Craig, yet they have a direct interest in both, because the stipend being modified out of the teinds of the two parishes proportionally according to their respective rentals, it is their interest, that the teinds of the parish of Dunninald should suffer no abatement, and likewise, because the College, as patrons of the united parishes, have an interest to preserve the fund out of which the stipend is payable free from all unnecessary deductions; Leslie against the Earl of Kintore and Others, 25th February 1795, No. 165. p. 15770.

The pursuer claimed sundry deductions from the amount of his rental, upon which, and the right of the College to object, the Lord Ordinary pronounced the following interlocutor: ‘ Finds, That the following articles are not proper grounds of deduction, viz. 1st, Money paid for lime at the commencement of the lease; 2d, Money allowed for putting the farm in good condition; 3d, Price of purchasing former leases; 4th, Lime laid on the ground by the proprietor in the natural possession of the land; 5th, Money laid out in making earth fences: Finds, That the following articles are proper grounds of deduction, viz. Lime allowed annually below the market price; 2d, additional rent for benefit of bridge; 3d, money laid out on stone-dikes: Finds, That the College have neither title nor interest to object to the valuation of lands, to the teinds of which they have not right as titulars; and appoints a scheme to be made out on these principles.’

Both parties reclaimed to the Court against this interlocutor; and their Lordships, after advising the petitions, with answers, found, ‘ That the College, as patrons, have a right to object to the valuation of the teinds of Dunninald; and in so far alter the Lord Ordinary’s interlocutor; and, *quoad ultra*, refuse the desire of both petitions, and adhere to the Lord Ordinary’s interlocutor.’

Reclaiming petitions against this interlocutor were presented by both parties, upon advising which, their Lordships pronounced the following interlocutor: ‘ The Court sustain the interest of the College as patrons to object to the pursuer’s valuation: Find the pursuer entitled to deduction from the proven rent of £10, as the interest of the price of lime furnished by him to the

‘ tenant : Find him also entitled to deduction of £16s. 9d. as the interest  
 ‘ of a sum advanced by him to a tenant to put his farm in good condition :  
 ‘ Find, That the rent of cot-town of Balheillieds, let *anno* 1785, must be the  
 ‘ rule of valuation of that farm : Find the pursuer entitled to deduction for  
 ‘ lime allowed annually below the market-price, as claimed : Find him also  
 ‘ entitled to the deduction claimed of additional rent for the bridge over the  
 ‘ Esk : Find him entitled to deduction for the expense of such stone-dikes as  
 ‘ have been erected within seven years previous to the commencement of the  
 ‘ process of valuation ; and, with these variations, refuse both petitions ; and  
 ‘ remit to the Lord Ordinary to rectify the scheme.’

No. 14.

Lord Ordinary, *Methven.*  
 Alt. *Maccormick.*

Act. *Robertson.*  
 Agent, *P. Anderson,* W. S.

Agent, *Jo. Grame,* W. S.

J.

*Fac. Coll. No. 235. p. 530.*

1807. February 18.

EDMONSTON and Others, *against* GRAHAME.

No. 15.

IN the year 1755, the minister of the parish of Strathblane raised a process of augmentation of his stipend. The process was finally concluded in 1758, and by the locality, the sum of £10. 6s. was allocated upon the lands of Craigallian.

Dereliction of a subvaluation not always inferred from over-payments for a long time.

When the minister charged upon his decree for payment, James Colquhoun, the proprietor, founding on a subvaluation of his teinds, 7th November 1758, took a protest, that payment should infer no homologation of the decree, but that it should be leisome for him to insist for redress, and obtain repetition of the money. The payments for 1758 and 1759 were made 17th May 1759, and 7th March 1760, under similar protests.

The subsequent payments were regularly made without taking any protest, till, in the year 1793, the incumbent raised a new process of augmentation, and an additional burden was by the scheme of locality to be imposed upon the lands of Craigallian.

James Colquhoun, 11th March 1794, made payment of the £10. 6s. due for crop 1793, under protest; and a similar protest was taken for the next year's stipend.

He now raised a process of approbation of the report of a subvaluation in 1629, in which (1st July 1795) decree was obtained in absence. He also raised a process of reduction of the decree of modification and locality in 1758, against the minister and heritors, and contended, that the subvaluation must in future be the rule for ascertaining the stipend payable by him. These were afterward insisted in by Adam Grahame, Esq. who became proprietor of the estate by purchase.

The minister also raised a process for setting aside the decree of approbation of the subvaluation. The processes were conjoined, and the cause reported to the Court.