

ent duties, however; for stock and teind were contained in those charters, and paid by the vassals.

In a process of augmentation, Miss Scott claimed an immunity from payment of stipend for these lands, as being held by her *cum decimis inclusis*.

But the Court, considering that lands granted *cum decimis inclusis* were such as had never been subject to the exaction of teind, or in which there had never existed a separation of stock and tithe, whereas here were an actual separation and a corresponding distinct payment of duties, adhered to the Lord Ordinary's interlocutor repelling the objection.

Lord Ordinary, *Gardenstone*.

Act. *Tytler*.

Alt. *Ilay Campbell, R. Dundas*.

§.

Fac. Coll. No. 54. p. 86.

No. 82.

tithe be inconsistent with *decime incluse*?

1792. June 6.

THOMAS ELLIOT OGILVIE *against* SIR JOHN SCOT.

An action was brought by Mr. Ogilvie, for a valuation, and also for a sale of the tithes of his lands, in the parish of Ancrum.

In this action Sir John Scot produced charters from the Crown before the year 1790, in favour of his predecessors, containing the following grant: "Una cum advocacione, donatione, et jure patronatus ecclesie et parochie de Ancrum, decimis rectoriis et vicariis ejusdem," &c. And hence he contended, that he was titular of the tithes as well as patron of the church of Ancrum, and so entitled to *nine* instead of *six* years purchase.

In opposition to this demand, Mr. Ogilvie

Pleaded: Anciently a patron had not only the right of presenting the parochial incumbent, but a patrimonial interest in the tithes. Hence it became usual to frame rights of patronage in the terms here employed, the teinds being conveyed as well as the patronage. Still, however, the former have been considered merely as accessory to the latter, as was determined, January 4, 1749, Marquis of Annandale, No. 65. p. 15662.

It is true, that a decision apparently different was given, June 20, 1753, Spalding, No. 70. p. 15670; but, besides the circumstances which in that case tended to show, that something more than a right of patronage was intended, the words of the grant were much more comprehensive than in the present case, the right of patronage being given "*cum decimis*," which seemed to indicate a conveyance of the tithes, altogether separate from and independent of the right of patronage.

A subsequent determination, January 1762, Blair against Bryce Ker, proceeded on similar grounds, Mr. Blair's title-deeds not only giving him a right of patronage, and also the glebe, manse, and tithes of the parish, but containing a separate *reddendo* for these last rights.

Answered: Where a right of patronage only is intended, there is no occasion for mentioning tithes; because, so far as the patron is entitled to interpose in the

No. 83.

The grant of a patronage *cum decimis rectoriis et vicariis*, before 1690, gives a right to the titularity of the tithes.

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: