

No. 89.

The Court were clearly of opinion, that the distinction made by the defender, between the teinds of Bishops and those belonging to the members of chapters is well founded, and that the latter have none of the privileges of the former, but belong to patrons under the acts 1690 and 1693.

The Lords (18th November 1796), assoilzied the defender.

And upon advising a reclaiming petition, with answers, they unanimously "adhered,"

Lord Reporter, *Glenlee*.

Alt. Rolland, *Rac*.

D. D.

Act. Solicitor of Tithes *Balfour, W. Robertson*.

Clerk, *Sinclair*.

Fac. Coll. No. 26 p. 61.

1797. June 7. DR. LAMONT *against* The HERITORS of URR.

No. 90.

A proprietor who purchases his teinds, during the dependence of a locality, is liable for stipend only *pari passu* with those heritors who have previously acquired heritable rights to their teinds.

In 1794, the Minister of Urr got an augmentation of his stipend, to commence with crop 1792. At this time, Dr. Lamont, one of the heritors, had no right to his teinds, which belonged to the Earl of Selkirk, who was titular of the parish, but not an heritor in it.

Dr. Lamont, however, afterwards raised a process of valuation and sale, in which a proof was allowed, in May, 1795. Before this, two different schemes of locality had been rejected.

In July, 1795, the Lord Ordinary approved of a third scheme of locality, in which the teinds of Dr. Lamont, and other two heritors, was first exhausted, as being free teinds.

In November, 1795, Dr. Lamont obtained a voluntary disposition of his teinds from the Earl of Selkirk, which he produced in the locality, as making him liable in stipend only *pari passu* with heritors who had previously acquired heritable rights to their teinds.

The Lord Ordinary adhered to his former interlocutor.

Dr. Lamont reclaimed; and

Pleaded: The maxim, *pendente lite nihil innovandum*, applies only where the interest of the pursuer is affected, and does not prevent the defenders in a process from taking steps to alter their situation *inter se*. Accordingly, it is a settled point, that a judicial competition of creditors does not prevent them from acquiring preferences by arrestment or adjudication; 18th November, 1779, M'Haffy against Maclellan *; December, 1784, Maconochy against Marshall *; 12th July, 1785, Massey against Smith, No. 73. p. 8377.; 22d November, 1785, Grierson against Douglas, Heron, and Company, No. 44. p. 274.; 22d June, 1791, Peirce against Limond. No. 16. p. 244. The same principle must regulate the present case. The Minister, or perhaps, more properly speaking, the titular, is the pursuer in a process of locality. Neither of them has any interest to oppose the present demand; and the heritors in a locality have the same faculty of acquiring

* These two cases not reported; see APPENDIX.

an heritable right, which the creditors in a judicial ranking have of acquiring preferences by diligence.

No. 90.

Answered: A party may take legal steps, *pendente lite*, for completing a right already vested in him; but he can acquire no new right by which the interest of his competitor may be affected.

Although the conclusions for modifying the stipend, and that for proportioning it among the heritors, be contained in the summons brought by the Minister, he is, properly speaking, pursuer only in the former, because, provided there be teinds enough in the parish, he has no interest as to the proportion of stipend to be paid by each heritor. In the locality, the titular and heritors are mutually pursuers and defenders; and, therefore, *ex concessis*, no one can affect the interest of the rest; 18th June, 1783, Sommerville and others, against the Earl of Lauderdale*; 9th July, 1783, Allan, and others, against the Earl of Lauderdale*; 23d February, 1785, Wilson against the Duke of Queensberry*; 20th July, 1785, Herries against Marquis of Annandale*. The opposite doctrine would be attended with much inconvenience. An heritable right so acquired ought, in all events, to have no retrospect; and, therefore, one scheme of locality would be required for the period between the date of the summons of augmentation and that of the heritable right, and another after the latter is obtained; and as different heritors may successively acquire such rights, the duration of localities might be indefinitely protracted.

Observed by the Court: The object of Dr. Lamont's action was merely to bring him in *pari passu* with the heritors having right to their teinds. The titular has no interest in this case; and the heritors can have no proper title to complain.

The Lords (29th June, 1796,) "altered the Lord Ordinary's interlocutor complained of, and found the petitioner has produced a sufficient heritable right to the teinds of his lands within the parish, to entitle him to be localled upon only *pari passu* with other heritors having heritable rights."

A petition against this interlocutor having been followed with answers, the Lords unanimously "adhered."

Lord Ordinary, *Ankerville*. For Dr. Lamont, *D. Cathcart*. Alt. *W. Robertson*.
D. D. *Fac. Coll. No. 34. p. 78.*

1798. November 21.

ALEXANDER COLVILLE, and Others, against The Reverend DAVID BALFOUR.

The report of the Sub-commissioners of the parishes of Torryburn and Crombie bears, that Robert Colville "producit an charter grantit to his predecessors and him of the lands of Crombie, *cum decimis inclusis*, daittet the 11th day of No-

No. 91.
Lands exempted from payment of stipend, upon production of

* None of these are reported; see APPENDIX.