

After hearing counsel, it was
 Ordered and adjudged that the said interlocutors be, and
 the same are hereby affirmed.

For Appellant, *R. Dundas, Al. Forrester.*
 For Respondent, *C. Yorke, Al. Wedderburn.*

1758.

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 HIS MAJESTY'S
 ADVOCATE, &C.
 v.
 DUKE OF
 MONTROSE,
 &C.

HIS MAJESTY'S ADVOCATE, in behalf of the
 PRINCIPAL and PROFESSOR of the COLLEGE } *Appellant;*
 of GLASGOW - - - - -

His Grace the DUKE of MONTROSE, and Others, *Respondents.*

House of Lords, 15th March 1758.

TEINDS—OLD VALUATIONS UNRATIFIED.—The Tithes of a parish were valued, but the decret of valuation was lost, and the only evidence was an old book, containing the valuation of the Subcommissioner of Teinds not ratified by the Chief Commissioners. Held it competent for the Teind Court, at the distance of 100 years, to ratify the report of the old valuation of the Subcommissioners.

THE respondents, the Duke of Montrose and Others, were heritors and landowners in the parish of Drymen, in the county of Dumbarton, and brought an action before the Court of Session, as Commissioners for the Valuation of Teinds, to have it declared that their teinds were valued, and to interpose their authority, and to certify and approve of the old valuation of the subcommissioners in the following circumstances.

It was stated, that their tithes were all valued, but, in consequence of the wreck of the vessel which brought back the records of Scotland from England after the Restoration, and also the great fire that destroyed the records of the Teind Court, where most of the decrees of valuation made by the commissioners and subcommissioners were deposited, the valuations could not be proved, yet a book had been discovered in the Lower House of Parliament some years ago, containing valuations of the subcommissioners in seventeen presbyteries in Scotland; and this book contained the report of those subcommissioners of the tithes for the presbytery of Dum-

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 &c.

barton, from which it appeared, that those commissioners appointed by King Charles I. did, in the year 1627, authorize certain subcommissioners to settle and adjust the tithes of the whole lands within the presbytery of Dumbarton. These subcommissioners accordingly met at Dumbarton, on 22d April 1629, and after proof taken, concluded their valuation on 31st March 1630, and their report was drawn out and duly lodged in Holyrood House, on 16th June thereafter. This report contained the valuation of the respondents' lands of Drymen; and although the ratification by the general commission could not be found, owing likely to the above destruction of the records, yet the respondents (pursuers) submitted there was evidence sufficient to sustain the valuation of the subcommissioners, and to entitle them to insist for a ratification of the same.

Feb. 22, 1757. The Lords, of this date, pronounced this interlocutor: "Ratify, allow, and approve the valuation of the subcommissioners of the presbytery of Dumbarton, in so far as concerns the pursuers; their lands libelled, and interpone their decret and authority thereto, and decern and declare accordingly."

Against this interlocutor the present appeal was brought.

Pleaded by the Appellant.—1st, The Court of Session has no power to ratify or approve the subcommissioners' report for valuation of tithes: for though the acts 1633 and 1661 empowered the commissioners therein named to receive reports from the subcommissioners; yet that power not being repeated in the act 1663, or subsequent commissions, it may be presumed that no further authority was given to the Court of Session by the act 1707 than was contained in the commission of 1663. 2d, The subcommissioners' report being therefore of no effect, until confirmed by the high commission, is to be viewed as no better than a begun process, and a step in the proceeding, which has become of no effect from not being completed, and at this distance of 100 years cannot now be ratified; it being deserted for more than 40 years, has become void by the negative prescription. 3d, The heritors in the parish of Drymen had, moreover, departed from this valuation of the subcommission, having possessed their tithes on a different title, by accepting leases from the crown, and by paying tithes according to the stipulation in those leases. 4th, That the report produced was also defective, without the consent of the Archbishop of Glasgow, who was then titular of the tithes.

Pleaded for the Respondents.—1st, That the powers of the Court of Teinds, in this matter, cannot admit of doubt, which were, “to determine in all valuations and sales of teinds conform to the rules laid down, and powers granted by the 19th act of Parliament 1633,” &c. And by the Act 1633 they had powers “to receive the reports from the subcommissioners within each presbytery, of the valuation of whatsoever teinds led and deduced before them, and to allow or disallow the same.” 2d, That prescription, positive or negative, does not apply to this case, as the subcommission sufficiently barred any such. 3d, Undoubtedly leases had been from time to time granted of the tithes, but at a lower rate of valuation, than that in the decree of valuation, so that it was impossible to infer from these leases, a desertion of the real valuation, or that the decree of valuation was awarded. Even if a different valuation had been afterwards adopted, it could not possibly affect the interests of the whole landholders of the parish, who are not to be presumed to have surrendered so valuable a benefit; and all the objections urged by the appellant have been, by various decisions of the Court, overruled, and this upon an equitable construction of the acts of Parliament.

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 Act 1707.
 HEPBURN, &c.
 v.
 CONGALTON.

After hearing counsel, it was,

Ordered and adjudged that the interlocutor complained of be affirmed.

For Appellant, *C. Pratt, Ro. Dundas, C. Yorke.*

For Respondents, *Al. Forrester, Al. Wedderburn.*

Not reported in Court of Session.

[M. 15507.]

JOHN, JAMES, GEORGE, and ANNE HEPBURN,	}	<i>Appellants;</i>
and their TUTOR <i>ad litem</i> ,		
CHARLES CONGALTON, and Others,	-	<i>Respondents.</i>

House of Lords, 6th Dec. 1758.

ENTAIL.—RESOLUTIVE CLAUSE.—Imperfect resolute clause appearing in an entail: Held, the entail not good against debts contracted in contravention of the prohibitions. But that the next heir-substitute succeeding to the contravener had good action against him and his representatives to purge the estate of such debts.

The entail of the estate of Humbie, executed before the act 1685, with prohibitions against selling, disposing, wad-