

No. 78. them as their superior. The charter, proceeding upon these two express acknowledgments of the Earl's universal right of property, and the family of Cairncross being his kindly tenants, was accepted by him, and has been their title of possession for more than a hundred years. If no antecedent rights had been produced but the charter alone, upon which the defence is now founded, there could not be the smallest dubiety that the pursuers were not entitled to insist in this process; and, if such is the case, the production of other antiquated deeds, the import and tendency of which must at this time be extremely precarious and uncertain, when there is an utter impossibility of receiving any intelligence or information what objections might justly have been brought against them, must be equally ineffectual; perhaps they may have been forged and fabricated, or obtained by fraud and circumvention, or qualified by back bonds, to be in trust for the Earl himself; or, what is not at all improvable, they might have laboured under a clause of redemption. In short, every thing must be presumed against them at this hour; and no great stress and dependence can be laid upon transactions involved in all the darkness of remote antiquity.

Moreover, this appears to be a split-new right, and, for the best reason in the universe, that it was granted to James Cairncross younger, his father being then alive, in whose person the antient title deeds could only at that time be vested. The son had no right, that could be renewed, and was incapable of receiving any, except a new one. William Cairncross, the father, obtained his charter from the Crown, and had taken infeftment upon it long before the Earl of Melrose got a grant of the Abbacy. So it was altogether impossible for the Earl to renew the right in favour of the family of Cairncross, as William the father was still alive and the Crown's vassal in these lands. It was with the son only that the Earl entered into this transaction, and gave him a complete new right, when there was none before established in his person, as his predecessor, whose right could alone be renewed was in life at that time.

The Lords found the teinds of the pursuer's lands libelled saleable.\*

*Act. William Johnstone.*

*Act Alexander Lockhart.*

*A. C.*

*Fac. Coll. No. 132. p., 308.*

1770. *March 7.*

OFFICERS of STATE and EARL of BREADALBANE *against* DUNCAN CAMPBELL.

No. 79.

In this case the question was, Whether teinds, called the Bishop's quarter tithes, in the bishoprick of Argyle, are to be considered as free teinds, and subject to allocation, in augmentation of stipend, before teinds to which the proprietors had heritable rights? It was found, That no part of the stipend could be allocated upon the fourth of the teinds which formerly belonged to the Bishop, till the other teinds within the parish, as well those heritably disposed as not, were exhausted.

*Fac. Coll.*

\* \* This case is No. 22. p. 14796. *vide* STIPEND.