

No. 80. pay the same to Lady Frances the titular, or to the Minister; and, upon the supposition that the defenders should purchase their tithes from the titular, they would in so far become successors to Lady Frances in the right of titularity, and, consequently, behoved to be liable for their proportion of the communion-elements, by the express terms of the judgment of the Court.

The pursuers, indeed, have no interest to make any objection to that part of the defender's plea, viz. that, if the Court should be of opinion that the communion-elements are a burden upon the tithes, and that Lady Frances is entitled to allocate those of the defender's lands for that purpose, they ought to have a proportional relief out of the locality of the stipend, so as that they may be upon a level with the other heritors. It is certainly her interest, that the burden should be taken off the defenders' and the other heritors of Corntoun, and laid upon the other heritors of the parish.

The Court refused the desire of the petition, and adhered to the former interlocutor."

For Titular, *R. M. Queen.*

*Akt. Rolland*

*Fac. Coll. No. 15. p. 37.*

1777. July 9.

CAMPBELL *against* EARL of MORAY.

No. 81.

The heritors of Balquhidder, in an augmentation, contended that the same should be laid on the Earl of Moray's teinds of Inverlocharig, as he had produced nothing but a personal right to them, no mention whatever being made of the teinds in his disposition to the lands from the family of Athole. Answered, As the estate of Glengarroch, of which Inverlocharig made a part, was feued out in the year 1719, by the family of Athole, in five different parcels, and a right to the teinds had been granted expressly to all the other parcels; it must be presumed that it was a mere omission not to give the same right to that in question, particularly as there is no reservation of teinds in the conveyance; and there has been no demand made for those teinds by the family of Athole from the date of the feu.

The Lords found that the Earl of Moray had instructed a sufficient right to the teinds. See APPENDIX.

*Fol. Dic. v. 4. p. 353.*

1782. July 17.

HERITORS of the Parish of COLLESSIE *against* MISS HENRIETTA SCOTT.

No. 82.

Whether separate *red-dendos* for stock and

Miss Scott was proprietress of certain lands which had anciently belonged to the abbacy of Lindores. In all the different charters of these lands, the teinds were comprehended, and uniformly denominated, *decimæ garbales inclusa*. Differ-

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.