

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*.
D. D.

For Dr. Lamont, *D. Cathcart*.

Alt. *W. Robertson*.

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.

No. 91.
a charter in 1565, by which they were conveyed *cum decimis inclusis, et nunquam antea separatis*; but found not entitled to exemption on a charter in 1584, by which the lands were conveyed simply *cum decimis inclusis*.

umber, 1565 zeairs; and sicklyk producit an charter grantit to his predecessors and him, *cum decimis inclusis*, of the lands of Cultes, daittet the 29th day of October, 1557, confirmed by his Matie the penult day of January, 1567."

In an action for approbation of this report, which the proprietors of Crombie and Cults founded on as exempting them from payment of stipend, the oldest title produced with regard to Crombie was a Crown charter, in 1565, confirming a charter granted by the Commendator and Convent of the Monastery of Culross, in 1560, which conveyed the lands, "et decimas ad rectoriam earundem terrarum spectan. inclusas, cum universis et singulis suis pertinentiis; quæquid. decimæ ad rectoriam prædictarum, ut præmittitur, spectan. nunquam antehac divisum a stipite et trunco separatim cuidam personæ, in assedatione concedebantur aut locabantur."

The oldest title produced as to Cults, was a charter from the same monastery, in 1584, disponsing the lands "decimis, tam vicariis quàm rectoriis, earundem inclusis."

On advising memorials, the Court (7th March, 1798,) "found there is no sufficient evidence produced that the lands of Cults" are "held *cum decimis inclusis et nunquam antea a trunco separatis*;" and approved of the report *quoad ultra*.

In a petition against this interlocutor, the proprietor of Cults pleaded, That the notion, that those lands only are entitled to exemption from payment of stipend, as being held *cum decimis inclusis*, where the stock and teinds were feued out together by churchmen before the Lateran Councils, is now exploded: That a charter prior to the act 1587, C. 29. is of itself sufficient; and the expression, *nunquam antea separata*, or the like, is superfluous; 28th January, 1675, Minister of Tulliallan against Colvill, Sect. 2. *h. t.*

Answered: To give the exemption claimed, the stock and teinds must not only have been feued out together before the act 1587, but the oldest title produced, must bear evidence that they were at no time held as separate subjects. In the present case, both parcels of lands were feued by the same monastery; and the difference of expression used in the two charters shews, that the lands were then understood to be in different situations.

The Lords almost unanimously adhered.

Act. Geo. Fergusson, Ar. Campbell.

Alt. J. W. Murray.

D. D.

Fac. Coll. No. 93. p. 213.

1799. June 26.

DR. MITCHELL, Minister of the Parish, and The COMMON AGENT in the LOCALITY of MONKTON, against The SOCIETY of WRITERS in AYR.

The Society of Writers in Ayr are proprietors of certain fishings in the parish of Monkton, from which, by a locality, in 1678, £.2 Sterling yearly were made payable to the Minister.

No. 92.
The tithe from fishings is regulated entirely by use of payment.