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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.

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The tithe from fishings is regulated entirely by use of payment.

This sum continued to be paid, till Dr. Mitchell, the present Minister of the parish, obtained an augmentation of his stipend.

The rental of the fishings was then stated at £.80 yearly.

A scheme of locality, in which above six bolls of grain were laid on the fishings, was approved of by the Lord Ordinary.

But the Court, on advising a petition, with answers, on the ground that fishings are subject only to vicarage-teinds, which depend entirely on possession, see 9th March, 1796, Hunter against Duke of Roxburgh, Sect. 3. *h. t.* found, "That the petitioners cannot be liable in any share of the augmented stipend."

Lord Ordinary, *Ankeruille.*

For the Minister, &c. *J. Ferguson.*

Alt. *Hay.*

D. D.

Fac. Coll. No. 135. p. 307.

1802. November 17. LORD DUNDAS, against BALFOUR and Others.

The Minister of Westray and Papa-Westray, in Orkney, raised a process of augmentation many years ago, and a considerable addition to his stipend was awarded by the Court; but, owing to the particular situation of the teinds of his parish, the stipend never was allocated. The decree of modification, however, was extracted, and the Minister levied the augmented stipend. Matters continued in this situation until a new incumbent succeeded to the charge, who brought a fresh process of augmentation, and the Court (November 26, 1800,) made a farther addition to the stipend, remitting to Lord Glenlee, Ordinary, to prepare a scheme of locality.

In arranging this locality, a question arose between Lord Dundas the titular, and the heritors, Whether the feu-duties, payable to his Lordship by the different heritors for the teinds of their lands, should be allocated, in the first instance, as free teind for the Ministers's stipend? This question had occurred in the localities of several parishes in Orkney, in the same circumstances as the parish of Westray and Papa-Westray, and the Court uniformly found, that the feu-duties were to be allocated upon as free teind in all these parishes.

The Lord Ordinary approved of a scheme of locality of Papa-Westray, which had been made up upon this principle; and the Court, upon advising a petition for Lord Dundas, with answers, in which the arguments formerly used were again repeated, adhered.

Lord Ordinary, *Glenlee.*

For Lord Dundas, *Robertson.*

Agent, *C. Innes, W. S.*

For Balfour, *Clerk.*

Agent, *A. Youngson, W. S.*

J.

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The feu-duty paid to titulars by heritors, for the teinds of their lands, may be allocated *primo loco* for the Minister's stipend.