

unless specially conveyed. Neither do any of the subsequent conveyances ever take notice of these teinds; so that supposing the teinds to have been possessed since the original feu by the family of Athole, no prescription could follow, as there was no title to prescribe.

Answered, That as the estate of Glengarnock was feued out in 1719, by the family of Athole, in five different parcels, to the whole of which, except to Inverlochlarig, one of the parcels in question, were granted rights to their teinds, it must be presumed that it had been a mere omission as to that parcel, particularly as there is no reservation of teinds in the conveyance. That this was the case is evident, from the family of Athole never having made any demand for these teinds, which they appear to have done for other teinds in the parish, which had not been disposed; and the Duke of Athole, as the titular of the parish, has now localled them as teinds heritably disposed; therefore, certainly, in a question with the other heritors, this must be considered as a sufficient title. For although teinds are considered as *separata tenementa* from the lands, yet the decisions of this Court have, according to the intendment of the Legislature, laid hold of the slightest grounds for uniting them; and therefore, although the teinds are not conveyed *per expressum*, it must be presumed, from the circumstances of the case, that it was the disponent's intention to convey both stock and teind; 27th February 1672, Scott against Muirhead, No. 31. p. 15638; 5th July 1748, Dunning against Creditors of Tullibole, observed by Lord Kilkerran, No. 62. p. 15659. And it appears, that both the Earl of Moray and his authors had paid a price for these lands, adequate to the value of both stock and teind.

The Lord Ordinary repelled the objection to the Earl's titles; and upon advising a petition against this interlocutor, with answers, the Court sustained the titles to the teinds, produced for the Earl of Moray.

Lord Ordinary, *Alva*.

Act. *M'Leod, Bannatyne*.

Alt. *D. Rae*.

D. C.

1799. December 4.

SOLICITOR of TITHES, against The EARL and COUNTESS of FIFE.

IN 1736, the Solicitor of Tithes brought a process of spuilzie of teinds against the Earl of Caithness, concluding for the full value of the teinds in time to come, as belonging to the Crown in right of a bishop.

The Earl, at this time, possessed part of his teinds on an expired lease from Exchequer; but an inhibition had been previously used against him.

Defences were returned, *inter alia*, denying the right of the Crown to the teinds in question; but little was done in the action till 1749, when the Earl took a day to depone to the amount of his rental.

No. 4.

No. 5.

The effect of an inhibition, and dependence of an action of spuilzie of teinds, in preventing tacit relocation, is taken off by subsequent accept-

No. 5. The day elapsed without his appearance, and in 1750 an interlocutor was pronounced, not by the Judge in the cause but by the Lord Ordinary on acts and regulations, circumducing the term against the Earl, and holding him as confessed. Upon this a decree was extracted in 1752, finding him liable for the sums libelled, and a charge of horning was soon after given on it. But no further demand was made on this decree before the Earl's death in 1766; and from the commencement of the process, he had frequently paid the former tack-duty to the collector of the bishop's rents, and particularly he had done so for some years immediately before his death.

The Countess of Fife was his executrix, and Sir John Sinclair, his heir. In 1770, an action was brought against Sir John upon the same grounds as against the Earl; but the decree in 1752 was not founded on; and some evidence was taken in order to establish the right of the Crown to the teinds. The process was afterwards allowed to sleep for some time, but it was revived in 1783; and a separate action was raised against the Countess and Earl of Fife, founded on the decree 1752.

The defenders brought a reduction of this decree, on the ground that the extract was not warranted by the interlocutor on which it proceeded.

The Court (22d Nov. 1796) ultimately reponed the defenders against the decree in 1752, found that the teinds of part of the lands belonged to the Crown in right of the bishop, and remitted to the Lord Ordinary to hear parties on the claim for arrears.

The claim against Sir John Sinclair was compromised. In the question with the executrix, the Lord Ordinary found, '1mo, That the late Earl of Caithness having been legally interpellated by an inhibition of teinds, and a process of spuilzie following thereon, from considering this tack of bishop's teinds as still subsisting by tacit relocation, his representatives, the Earl and Countess of Fife, cannot plead the continuation of the old duty to the collector of the bishop's rents, during the dependence of this process, as barring the pursuer, the Solicitor of Tithes, from insisting for payment of the full tithes after such interpellation; and therefore found the same still due. 2do, Found, That out of these full tithes, the Earl and Countess are entitled to a deduction of the old tack-duties paid to the said collector of bishop's rents, and of such stipends to ministers as shall be instructed by vouchers; and he afterwards found the defenders liable in interest on the sums thus found due.

The claim against Sir John Sinclair was compromised.

In the question with the executrix, the Lord Ordinary found, '1mo, That the late Earl of Caithness having been legally interpellated by an inhibition of teinds, and a process of spuilzie following thereon, from considering this tack of bishop's teinds as still subsisting by tacit relocation, his representatives, the Earl and Countess of Fife, cannot plead the continuation of the old duty to the collector of the bishop's rents, during the dependence of this process, as barring the pursuer, the Solicitor of Tithes, from insisting for payment of the full tithes after such interpellation; and therefore found the same still due. 2do, Found, That out of these full tithes, the Earl and Countess are entitled to a deduction of the old tack-duties paid to the said collector of bishop's rents, and of such stipends to ministers as shall be instructed by vouchers; and he afterwards found the defenders liable in interest on the sums thus found due.

The claim against Sir John Sinclair was compromised.

In the question with the executrix, the Lord Ordinary found, '1mo, That the late Earl of Caithness having been legally interpellated by an inhibition of teinds, and a process of spuilzie following thereon, from considering this tack of bishop's teinds as still subsisting by tacit relocation, his representatives, the Earl and Countess of Fife, cannot plead the continuation of the old duty to the collector of the bishop's rents, during the dependence of this process, as barring the pursuer, the Solicitor of Tithes, from insisting for payment of the full tithes after such interpellation; and therefore found the same still due. 2do, Found, That out of these full tithes, the Earl and Countess are entitled to a deduction of the old tack-duties paid to the said collector of bishop's rents, and of such stipends to ministers as shall be instructed by vouchers; and he afterwards found the defenders liable in interest on the sums thus found due.

The defenders, in a reclaiming petition, contended that the usual effect of an inhibition of teinds, in preventing tacit relocation, was barred in the present case by the subsequent payments of the former duty to the collector of the bishop's rents, on the same principle that a warning to remove would be held to be passed from by a landlord's afterwards accepting payment of the former rent: That this was confirmed by the delay on the part of the Crown in bringing the action to a conclusion: That in these circumstances, the Earl was put

*in bona fide* to believe that no further claim was to be made against him, and therefore was not liable for arrears; August 1788, Earl of Haddington against Earl of Home; (not reported;) 25th February 1795, Sir John Scott against Heritors of Auerum, No. 87. p. 15700.

No. 5.

Answered: The offices and duties of the Solicitor of Tithes, and collector of bishop's rents, are totally distinct from each other. It is the business of the former, by inhibition and process of spuilzie, to force heritors to renew their leases, and pay the usual composition of three years full value in Exchequer. The latter collects merely the elusory duty afterwards payable during the currency of the lease. It frequently happens, that the composition is in the same year received at the instance of the one, and the duty collected by the other; and as the latter had no power, so it will not be presumed that he intended to discharge the claim competent at the instance of the other, of the steps taken to enforce which he might be wholly ignorant.

The established effect of an inhibition in preventing tacit relocation, particularly when accompanied by a process of spuilzie, decree obtained, and charge of horning given on it, is completely subversive of the plea of *bona fides* urged for the defenders; Stair, B. 2. Tit. 8. § 23; Ersk. B. 2. Tit. 10. § 45.

The delay in conducting the cause is imputable to the defenders themselves; and if it had been otherwise, the Crown cannot be affected by the negligence of its officers; 1600, C. 14; Dict. *voce* KING.

Upon advising the petition, with answers, the Lords, on the grounds stated for the defenders, unanimously assoilzied them: 'In respect of the payment of the old teind tack duties made by Alexander, Earl of Caithness, and accepted by the collector of bishop's rents, as an officer of the Crown, after the execution of the inhibition and citation in the action of spuilzie;' and found, 'that the respondent must relieve the petitioners of the expense of extract, reserving the Crown's claim for any arrears of said tack duties which may have been due by the said Alexander, Earl of Caithness, at the period of his death in 1766.'

A reclaiming petition was (17th Jan. 1800) refused, without answers.

Lord Ordinary, *Monboddo*. Act. *Solicitor of Tithes Balfour*. Alt. *Ar. Campbell, jun.*  
Clerk, *Pringle*.

D. D.

*Fac. Coll. No. 146. fo. 326.*

1799. December 11.

THE DEANS of the CHAPEL ROYAL and their LESSEES, against ROBERT HAY and OTHERS, Heritors of the Parish of Ettrick.

THE chapel Royal at Stirling was founded by Pope Alexander VI. at the desire of James IV\*. and consisted of a Dean, Subdean, Sacristan, Chanter,

No. 6.  
The tithes granted by the Crown.

\* Forbes, in his Treatise on Tithes, C. 5. § 10. says, the Chapel-Royal was founded by James III; but this is a mistake, as appears from Keith's Catalogue of the Bishops, and the Appendix to Hope's Minor Practices, C. 19. § 26.