

No. 12. pendary clergy were admitted on all hands to have had an important interest in subvaluations; and it would have been strange to have given them a right to appear in a court of review, if there had been no necessity for making them parties in a radical court.

The Lords (28th January 1810) repelled the objection, and, on advising a reclaiming petition, with answers, they unanimously adhered.

Act. *Connell.*

Alt. *Wm. Robertson.*

R. D.

Fac. Coll. No. 233. p. 527.

1805. *December 4.*

COMMON AGENT in the Locality of Eddleston, PETITIONER.

No. 13.

An heritor may at any time secure himself from any other payment, by surrendering to the minister his whole teind as valued.

In 1768, the stipend of the parish of Eddleston was modified to two chalders of victual and 1060 merks. In allocating the stipend, the victual was laid upon Miss Elliot and three other heritors, who had neither heritable rights nor tacks of their teinds. The allocation was (13th February 1770) approved of. These four heritors afterwards obtained a valuation of their teinds in money.

In 1795, a further augmentation was given. But only the same quantity of victual fixed by the former locality was laid on these four heritors' lands, which they paid down to 1800, when they tendered to the minister the whole of their money-teind, instead of the victual they had been in use to pay. Upon this the minister brought a new process of augmentation, when the stipend was fixed at six chalders of victual and £50.

In allocating this stipend, the common agent proposed, that the old stipend, as allocated in 1770, should continue to be paid, and the new augmentation be laid on the other heritors. On the other hand, it was contended, that no part of the old stipend could be allocated upon them, as they had surrendered their money-teind; and that as they had no interest in the locality, they ought not to be subjected to any part of the expense in allocating the stipend.

The Lord Ordinary (2d February 1802) ' finds, That as Miss Anne Elliot, ' John Ballantyne, Elizabeth Gibson, and her husband, and John Paterson, ' have surrendered their full valued teinds, to be now, and in all time coming, ' allocated to the minister as part of his stipend; therefore none of them can ' be liable for, or subjected in, any part of the expenses to be incurred in this ' process of locality.'

The common agent reclaimed, and

Pleaded: A locality which has been long settled, cannot be set aside, or the use of payment altered by any of the heritors surrendering his money-teind in lieu of the victual-stipend allocated upon them. The consequence of the

judgment in the case of Lamington, may very well affect and regulate future allocations : but it would be dangerous to allow it to operate, so as to alter localities previously fixed ; by which, as in this case, the other heritors have acquired certain privileges, by which a proportion of victual-stipend is laid upon those who now wish to free themselves, and which burden the other heritors must now bear, if they are relieved from it. (No. 38. p. 14827.)

The court adhered to the judgment of the Lord Ordinary, by refusing two reclaiming petitions without answers ; as the option given to heritors to surrender their whole teind must always be available to them, at whatever time they choose to adopt it ; for the Court of Teinds never can encroach upon the stock, whether by a payment in money or grain.

Lord Ordinary, *Dunsinnan*.

For Petitioner, *Reid*.

Agent, *Jo. Ker*, W. S.

F.

Fac. Coll. No. 226. p. 513.

* * Since this judgment was pronounced, it has often occurred, that heritors have chosen to surrender their teinds to the minister. The competency of doing so was again disputed in the case of Wallace, minister of Nenthorn, against William Roy of Nenthorn. In that case, which was decided 21st February 1810, the Court held the point to have been settled by the above report.

Jas. Moncrieff, Counsel, and *Balderston and Scott*, W. S. Agents, for Wallace.
John Reid, Counsel, and *W. Keyden*, W. S. Agent, for Roy.

1806. February 5.

SCOTT *against* ST. MARY'S COLLEGE, ST. ANDREW'S

THE parish of Craig is composed of two parishes which were united in 1618. The New College of St. Andrew's obtained a right to the teinds of one of these parishes, viz. Craig ; but have no right to the teinds of the other parish Dunninald, of which the Crown is titular. The stipend is paid out of the teinds of the two parishes proportionally, according to their respective rentals ; and this was by decret of the commissioners, declared to be the rule for allocating future augmentations.

David Scott of Dunninald was proprietor of lands in each of these parishes, and he raised a process of valuation of his teinds, in which he called the Crown, the New College of St. Andrews, and the Minister of the parish, as defenders. In the course of the process, the pursuer brought forward certain claims of deduction from the amount of the proven rental of his lands in the parish of Dunninald, to which the New College stated objections.

The pursuer maintained, that the College had no right to be heard in objections to the valuation of the lands of Dunninald, of which parish they were

No. 13.

No. 14.

The titular of one of two conjoined parishes, being patron of both, is entitled to state objections to the valuation of teinds in the other.

Deductions from rent allowed to the proprietor in valuing his teind.