

1701. *December. 10.*SIR WILLIAM HOPE *against* THE HEIRS and CREDITORS of BALCOMIE.

No. 132.

Value of
drawn teind
in a process
of sale.

Sir William Hope pursues a sale of the lands of Balcomie, in which there being an act and a probation led, at advising of the said probation, it did appear, that the rental proven to be payable by the tenant, was only for the stock, and that the heritor was in use to draw the teinds; and there being no compearance for the defenders, the Lords did reason upon the value to be put upon the drawn teind, in order to the sale; and it did occur to them, that, albeit the common rate and estimate of teind be the fifth part of the rent in question, betwixt heritors, and titulars, and tacksmen; yet where an heritor, having right to the teind of his own lands, sets the stock only to the tenants, and draws the teinds *ipsa corpora*, the teinds are much more valuable than the fifth part of the rent, stock, and teind; as also that drawn teind is more or less valuable, according to the nature of the ground; for, if the ground be barren, the increase is less than where the ground is fertile, and that, in this case, the lands lie upon the coast-side, and have the benefit of ware, as appeared by the probation; therefore "the Lords did value and estimate the teind to a fourth part, that is to say, for each three bolls of proven rental, they added one boll for drawn teind, whereby the teind is a fourth part of the whole stock and teind; and ordered the rental to be framed accordingly."

*Dalrymple, p. 38.*1706. *January 29.* THE EARL of GALLOWAY *against* HUGH MACGUFFOCK.

No. 133.

Rule of va-
luation where
parsonage
and vicarage
are separate.

The Earl of Galloway, as tacksmen of the parsonage-teinds of the parish of Borg, pursues Hugh Macguffock of Ruscoe, one of the heritors there, for the bygone parsonage-teinds of his lands; but there being little arable ground in that parish, most of it being in grass and pasturage, the question arose, What was to be reputed parsonage, and what vicarage, in such a case; and what should be the rule and standard for estimating the parsonage teinds? The pursuer contended, That if he were seeking to value these teinds in time coming, the rule would be the fifth part of the rent, which is the tenth part of the growth, conform to the 17th act of Parliament 1633, deducting such a stock as answers to the duty paid for the vicarage; and why should not the same be followed in valuing bygone teind-duties? The defender contended, whatever might be the rule in a perpetual valuation, yet where it has been suffered to lie long over, you can only regulate the bygones by the sowing and holding for seven years preceding the pursuit; the teinds being only *debita fructuum*, and due out of the corn-rent; and if there be no corn, then there is no great parsonage-tithes. It was objected by the Earl of Galloway, against this method, that if it were allowed, parsonages might be made elusory and worth nothing; for an heritor might cast his whole lands into grass, and so diminish and elude the parson's or titular's interest, which