

therefore thought the values of both behoved to be proven separate from the stock. However, the Lords found that the 5th part of the rent was the tithe parsonage and vicarage. 2dly, That the vicarage duty behoved to be deducted from that 5th, and the remainder was all parsonage tithe.—11th July 1739.

The interlocutor being reclaimed against, came to be considered, 16th July 1740, when we adhered;—and indeed upon considering the decreets-arbitral in 1629, I was more and more confirmed in the interlocutor, and that the several valuations spoken of where teinds were drawn, were meant a valuation of the teinds separate from the stock; but the separate valuation mentioned in the end of the act 1633, where there are different titulars of the parsonage and vicarage, (for which case no provision was made by the decreets-arbitral) was meant only to distinguish the value of the parsonage from the vicarage; and that in all cases the heritor should pay a fifth part of the rent for teind parsonage and vicarage; and the decreets bear expressly, that the King's case, when the teind was drawn, was given in order to bring it as near as possible to a fifth-part of the rent that might be paid for stock and teind, and that the heritor can have no benefit by the smallness of the vicarage teind-duty; and really all the inconveniency mentioned in the petition would equally hold if the parsonage and vicarage were but one benefice.

No. 13. 1740, July —. VISCOUNT PRIMROSE *against* SIR J. DALRYMPLE.

I KEEP these papers chiefly because of the memorials, pretty full upon the authority and effect of a valuation of the sub-commissions not approved by the Court of Commission. In this case we thought that odd sort of decret of the Commission to be nothing, and found that there was no decret of valuation, reserving to the heritor yet to insist for approbation of the report of the sub-commission as accords.—16th July 1740.

N. B. 4th December 1740.—Yesterday in the Commission on the question betwixt Lord Primrose and Sir John Dalrymple, the Lords waved determining the question whether a report of the sub-commission not approved can prescribe so as a process of approbation may not be pursued after 40 years, though possession has followed agreeably to the report, *i. e.* the titular never drew the teinds, nor any duty higher than that reported by the Sub-Committee. Arniston thought the action prescribed;—but the Court thought it of great importance setting aside all the old reports, and though severals have been not many years ago approved.

No. 14. 1740, July 23. DOUGLAS *against* MINISTER OF ST. MUNGO.

IN this modification and locality, a question occurred, Whether converted services should be computed in valuing teinds? There were three classes of them; one whereby the master had the option of the *ipsa corpora*, the services or conversion. 2dly, Where the tenant had the option. And 3dly, Where there was no option, but a certain rent stipulated in place of services formerly due. There was no question as to the second, where the tenant had the option, that they could not be stated. The Court was also of the same opinion as to the first, where the master had the option. Arniston was of opinion even as to the third, that where it appeared that a part of the rent was on account of services that had been due out of those lands, and no fraud qualified, that

neither could that additional rent be stated;—and the Court went into that opinion without any decision, notwithstanding of the contrary decision, that the petitioners themselves, Dornocks, acknowledged in the case of the Minister of Kirkurd.

No. 15. 1740, Dec. 3. (4.) SIR JOHN DALRYMPLE *against* LORD PRIMROSE.

See Note of No. 13, *supra*.

No. 16. 1742, June 16. BALFOUR *against* OFFICERS OF STATE.

TEINDS being erected in favours of the Duke of Lennox, Balbirnie's author's bought his teinds from the Duke with the King's consent, and in 1629 and in 1635, the King having bought the teinds from Lennox, he annexed them in that year to the Bishoprick of St. Andrews. Now, in localling a stipend, the question was, Whether the same should be laid upon Balbirnie, notwithstanding his heritable right, agreeably to the decision of Arngask in 1714, or if the Bishop's teinds, now in the Crown's hands, should be first allocated, agreeably to the decision 9th February 1734, in the case of the Parish of Nenthorn, and it carried first to allocate the Bishop's teinds. *Con.* were President, Royston, and Balmerino. *Pro* were Justice-Clerk, Minto, Drummore, Strichen, Monzie, Leven, *et Ego, et Dun.* Absent Arniston, Haining, and Murkle, and Kilkerran did not vote.

No. 18. 1744, Feb. 1. DUKE OF BUCCLEUGH *against* FEUARS OF DALKEITH.

The question was in a valuation of the tithes of the feuars of Dalkeith, whether any deduction ought to be from the rents on account of the dung of Dalkeith, whereof the town could at pleasure deprive them, for which deduction no less than seven judgments of the Court were quoted in the papers, from 1698, and even before it, to 1726, and others later upon the same reason in law. However, it carried by the President's casting vote, no deduction. Arniston, who was against the interlocutor, seemed surprised that the Duke's Commissioners judged in this question, and there were three of them for the interlocutor, 1st February 1744. 20th June, We altered the interlocutor of 1st February last, and found the feuars entitled to a deduction on account of the dung, and remitted to the Ordinary to hear on the quantity. *Con* were President, Royston, Minto, Dun, Murkle. *Pro* were Drummore, Kilkerran, Monzie, Arniston, *et ego.* Strichen did not vote. 6th February 1745, Altered by President's casting vote.

No. 19. 1744, June 20. COLLEGE OF GLASGOW *against* SIR J. MAXWELL.

FOUND that use of paying rental bolls could not hinder a process of valuation according to the present rent.

No. 20. 1744, Nov. 17. SIR ROBERT GORDON *against* DUNBAR.

NOTWITHSTANDING that these lands had never been set for a joint rent stock and teind, but the teinds had always been drawn while under corn; yet in respect there was no suf-