

Objected for the defender, that the commission under which these sub-commissioners acted, proceeded from the King without any act of Parliament; and it was then thought that commission might overtake the business of valuing all the teinds in the kingdom, which however it did not, and therefore a parliamentary commission was granted 1633, with power to receive the reports of former sub-commissioners, to the end that heritors might have the opportunity of buying their own teinds; but still this was looked upon as a business to be speedily determined, in so much that by the decret arbitral the faculty of buying was limited to expire at Martinmas 1635.

No. 145.

That a like commission was granted *anno* 1661, but in those granted afterwards there was no power to receive the reports of former sub-commissioners; and accordingly, from the Restoration to the Revolution, there did not appear any such report approved: And though the commission 1690 was in some respects more ample than those granted before it since 1661, yet with respect to the present question, it only gave power to receive the reports of its own sub-commissioners, and the Lords had now no more power than was competent to former commissions.

Answered, it had been the constant custom of the Court to approve the reports of the sub-commissioners under the former commissions.

The sub-valuation of the Presbytery of Dalkeith 1630 was approved 3d June 1713, at the instance of Sir John Clark and Sir David Forbes.

The kirk-lands of Dunse and lands of Grueldykes 1629, approved 23d June 1714.

The barony of Cockburn and lands of Westshiell, approved 30th June 1714.
Lands of Manderston, 28th July *ead.*

Hay of Drummelzier against the Earl of Lauderdale, 5th July 1721.

Sir Alexander Cockburn, 29th November *ead.*

Duke of Douglas against the purchasers of Panmuir, 16th January 1723.

The lands of the abbey of St. Bachans, in the parish of Dunse, valued 1629, approved 5th February 1724, at the instance of Home of Abbay.

Valuation of the presbytery of Kirkaldy, approved 26th January 1726.

Bothkennar, in the Presbytery of Stirling, approved 3d July 1734.

Replied, that most of these precedents were in absence, or upon consent; and in that of Sir John Clerk, which was the leading case, an objection was repelled, that prescription was run since the sub-valuation, but the objection now insisted on was not made.

The Lords Commissioners approved of the report.

D. Falconer, No. 139. p. 174.

1747. July 14. CLARK against The DUKE of QUEENSBERRY.

George Clark of Middlebie pursuing a valuation of his teinds, against the Duke of Queensberry, titular, it was alleged for the defender, That the tenants of the

No. 146.
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No. 146.
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lands paid the land-tax, on account whereof they no doubt had cheaper tacks ; and as the value of the estate was what it could pay, including the tax, which was a burden on the landlord, an addition ought to be made to the rental in consideration thereof.

The Lords Commissioners found the rent paid to be the rule, without any addition on account of the tenants paying the cess.

Act. R. Pringle.

Alt. Clark.

D. Falconer, v. 2. No. 198. p. 264.

* * The following is the same case, by Kilkerran, under different names and date, viz.

1747. July 22. MAXWELL of Middleby *against* The DUKE of QUEENSBERRY.

In a valuation pursued by Middleby of his teinds, parsonage and vicarage, against the Duke of Queensberry, titular of both, the Lords found, That neither poultry paid by the tenant, nor the cess whereof the tenant had no relief, were to be added to the rental.

Kilkerran, No. 7. p. 553.

1748. February 3. OLIPHANT *against* SMITH.

No. 147.
Approbation
of a sub-valuation, in
1643, refused.

The Lords, as Commissioners for Plantation of Kirks, &c. are in use to approve the report of the Sub-commissioners, though the same have not been approved by the High Commission ; as in Philiphaugh's case, No. 145. p. 15746. ; and Lord Monzie's case, (See APPENDIX,) and others there related. But, in a process at Oliphant of Bachilton's instance against Smith of Methven, the titular, for having the report of the Sub-commissioners made in 1643 on the value of the teinds of the lands of Bachilton approved, the Lords sustained the defence, that the Sub-commissioners derived their authority from the High Commission, appointed by the Parliament 1641, in respect that, by the 15th act of the Parliament 1661, rescinding the acts of Parliament 1641, there is no *salvo* of the sentences of the High Commission, which there is by the 9th act of said Parliament, which rescinds the acts of Parliament 1649 and 1650 ; and although there be in said act 15th of Parliament 1661 a general *salvo* of private rights, yet the Lords understood that only of completed rights or final decrees, et nil censetur actum quamdiu aliquid superest agendum ; and they thought they had already gone far enough with respect to the reports of Sub-commissioners.

Kilkerran, No. 8. p. 553.