

It would be hard that the pursuer's lands should be valued at a rent of which, from the length of the lease, he never can himself reap the benefit. No. 165.

Upon advising a petition, with answers, replies and duplies, the Lords sustained the objection, reserving to the pursuer to lead a new proof of the yearly value of the lands.

Act. Burnst.

Alt. Wm. Robertson.

Fac. Coll. No. 163. p. 374.

1796. December 14.

SIR HUGH MUNRO *against* The OFFICERS of STATE.

Sir Hugh Munro brought a valuation of teinds against the Officers of State. From the proof it appeared, that he allowed his tenants to dig peats out of a moss belonging to him, and that were he to deprive them of that privilege, they would give £.50 less yearly for their farms, for which sum he accordingly claimed a deduction from his rental.

The Lords unanimously repelled the claim.

Act. Geo. Ferguson.

Alt. Balfour.

R. D.

Fac. Coll. No. 8. p. 19.

1797. February 8.

The HERITORS of Blairgourie *against* The OFFICERS of STATE, and Others.

The teinds of the parish of Blairgourie were valued by the sub-commissioners in 1630. The Minister of the parish having afterwards brought a process of augmentation, the heritors, without taking notice of their valuations, agreed to pay him a much larger stipend than the amount of their valued teinds; and decree, of consent, was pronounced accordingly in 1650. The stipend thus settled had been paid ever since.

The Minister of the parish having brought another augmentation, the heritors raised an approbation of their sub-valuations, against the Officers of State, for the interest of the Crown, as joint patron of the parish, and against the other patron and the Minister, in which they declared their object to be, not to diminish the stipend formerly paid to the Minister, but to prevent any additional burden from being laid on their teinds.

The defenders objected: That the sub-valuations of the pursuers had been derelinquished, there being no distinction in principle, and none made in the decisions of the Court, between the effect of an excess of payment to the Minister and one to a lay titular, as the conduct of the heritors in both cases is to be ascribed to a conviction that their valuations were so defective that they could not

No. 166.

In a valuation of teinds, the proprietor is not entitled to a deduction from his rental on account of peats allowed by him to his tenants.

No. 167.

Dereliction of a sub-valuation inferred from an excess of payment to the Minister as well as to the titular.

No. 167. found on them; Erskine, B. 2. Tit. 10. § 34.; 28th February 1753, Earl of Morton against Marquis of Tweeddale, No. 7. p. 10672; 1st February 1764, Sir James Maxwell against the University of Glasgow, No. 13. p. 10692; 1762, Duke of Athol and Earl of Dunmore against Drummond; 3d February 1773, Lord Elibank against Officers of State; 14th December 1785, Heritors of Keith and Humbie against the Earl of Hopeton and Others. (These not reported; see APPENDIX.)

Answered: Although the Court have properly considered an excess of payment to a lay-titular as a dereliction of a sub-valuation, upon the ground stated for the defenders, the same inference ought not to be drawn from an excess of payment to the Minister, which may have proceeded solely from a wish on the part of the heritors, that he should be comfortably provided; 23d July 1760, Adam against Colville. (Not reported; see APPENDIX.)

Both parties likewise argued on the agreement between the Minister and heritors, and the decree following on it in 1650, as favourable to their plea.

The Court, upon advising memorials and additional memorials, which were ordered with a view to settle the general question, and without regard to specialties, came to be of opinion, that there was no difference between the effect of an excess of payment to the Minister, and one to a lay titular.

The Lords refused to approve of the report of the sub-commissioners, "in respect the same had been derelinqished by an over use of payment of stipend to the Minister."

A petition and additional petition were refused, (May 1797) without answers.

Act. Geo. Ferguson.

Alt. Solicitor of Tithes, Balfour, Wm. Robertson, Hagart.

D. D.

Fac. Coll. No. 16. p. 38.

* * * The Court, at the same time, pronounced a similar judgment in a question between Lord Dundas and the Minister of Balingry.

1798. *March 7.*

SIR WILLIAM ERSKINE and Others, *against* The Reverend DAVID BALFOUR.

No. 168.

A report of the sub-commissioners approved of, which proceeded on a proof of the value of the lands, although it did not bear that the Minister was present or cited.

Sir William Erskine, and other heritors of the parishes of Torryburn and Crombie, brought an approbation of the report of the sub-commissioners, with regard to their teinds, in 1629.

It appeared from the report, that the valuation took place at the instance of the procurator-fiscal, who was present. In several passages of it, it was mentioned, that the titular was present, and that the heritors were either present, or cited. But this did not appear with regard to the Minister.

The report, however, proceeded upon a regular proof of the value of the lands, except as to a few acres, which were valued of consent.

The Minister of the parish objected, That as the valuation proceeded in absence