

‘ the dependence of the present process of locality, and in so far altered the  
‘ interlocutor complained of.’ No. 9.

Lord Ordinary, *Ankerville.*  
Alt. *W. Robertson.*

For the Earl of Mansfield, *H. Erskine.*

R. D.

*Fac. Coll. No. 178. p. 403.*

1800. *December 3.*

The SOLICITOR of TITHES, *against* JOHN HEPBURN BELSCHES, and Other  
HERITORS of the Parish of DUNNING.

THE Minister of the parish of Dunning obtained a decree of locality, by which a portion of his stipend was laid on the lands of Easter and Wester Rossies.

The officers of state not having been parties to the locality, the Solicitor of Tithes, in 1792, brought a reduction of it, on the ground that the tithes of Easter and Wester Rossies were now in the hands of the Crown, as in right of the Arch-dean of the See of Dumblane, and that, being formerly the tithes of an Arch-dean, like Bishops' tithes, they enjoy the privilege of not being called upon till all the other tithes in the parish are exhausted.

The heritors, on the other hand, contended, That tithes belonging to the Arch-dean and other members of the Chapter, were not vested in the Crown, but belong to the patron of the parish, and enjoy none of the privileges of Bishops' tithes.

The arguments of the parties were nearly the same with those detailed in the case 23d May 1797, The Solicitor of Tithes against the Earl of Moray, No. 89. p. 15704.

The Lord Ordinary ‘ reduced the locality of the stipend of Dunning in the year 1773, and found, That no augmentation of stipend can be allocated upon the lands of Rossies Easter and Wester, until the whole other teinds of the parish are exhausted.’

But, upon advising a petition for the heritors, with answers, the case of the Earl of Moray was held to be decisive of the present; and the Court accordingly altered the Lord Ordinary's interlocutor and sustained the defences.

Lord Ordinary, *Ankerville.*

Act. *Solicitor of Tithes Balfour.*

Alt. *Rolland.*

R. D.

*Fac. Coll. No. 205. p. 473.*

1801. *May 20.* JAMES PETERKIN, *against* The EARL of MORAY.

THE estate of Grange, belonging to James Peterkin, and lying in the parishes of Forres and Kinloss, possessed a servitude over certain mosses in the parishes

No. 10.

Tithes formerly belonging to an Arch-Dean do not possess the privileges of Bishops' tithes.

No. 11.

In a valuation of teinds, the proprietor

No. 11. found not to be entitled to any deduction from the rental, on account of having communicated to his tenants the benefit of a servitude of digging peats for their own use, over the moss of a neighbouring heritor.

of Edinkillie and Rafford, by which the possessors of the estate of Grange have the privilege of digging peats for their own use:

Mr. Peterkin communicated the benefit of this servitude to his tenants; and in a valuation of the teinds of Grange, (of which the Earl of Moray is titular *qua* patron,) it was established by the proof, that if this servitude had been withheld from the tenants, their farms would have been less valuable, to the extent of £38 yearly.

In the scheme of valuation, this £38 was accordingly admitted as a deduction from the rental; and the scheme having been approved of by the Court, in absence of the titular, his Lordship, in a reclaiming petition,

Pleaded: That it is a point already fixed, that when the titular has not the right of digging peats for sale, the deduction claimed is inadmissible; 14th December 1796, Sir Hugh Munro, No. 166. p. 15711.

Mr. Peterkin, on the other hand, contended, That the judgment in the case of Sir Hugh Munro, could not govern the present one; *1st*, Because here the servitude was given over a moss which did not belong to the heritor; and, *2dly*, Because the Earl of Moray, although titular of the dominant, was not titular of the parishes in which the servient tenement was situated.

On advising the petition, with answers, it was

Observed on the Bench: Where tenants have not the right of digging peats for sale, the benefit derived by them is too indefinite to be a legal ground of deduction. On this principle, although the discovery of a coal mine,—the establishment of a manufacturing village,—of a public market,—or of a harbour, will have the effect of raising the rent of the adjacent lands, yet the heritor, when valuing his teinds, will get no deduction from his rent on any of those accounts.

The Court, by a great majority, repelled the claim of deduction.

Act. *W. Robertson.*

Alt. *Rae.*

*R. D.*

*Fac. Coll. (APP.) No. 15. p. 34.*

1801. *June 3.*

Major HECTOR MACNEIL, *against* The MINISTERS of CAMPBELTON.

No. 12.

It is not a relevant objection to the approbation of a sub-valuation, that the minister of the parish, if a stipendiary, was not cited as a party to it.

THE teinds of the lands of Ardnacross, belonging to Major Macneil, were valued in 1630 by the sub-commissioners of the presbytery of Argyle.

These lands lie within the ancient parish of Kilchouslane, now united to that of Campbelton. The Bishop of Lismore was titular of the teinds; and the minister serving the cure merely a stipendiary.

It appeared from the report of the sub-commissioners, that the heritor of the lands, with the titular and tacksman of the teinds, had been called as parties; but it did not appear that the minister of the parish had either been called, or had consented to the subvaluation.