

No. 169. the chalder; the annual payments made by them since its date considerably exceeded their valuations. But they brought a reduction of that locality; and contended,
1mo, That, in 1775, they were ignorant of the report of the Sub-commissioners, and that nothing short of a contrary use of payment for forty years could deprive them of their right to found on it; 15th December, 1773, Commissioners of Annexed Estates against Menzies, No. 15. p. 7860.

2do, That there had been no excess of payment, provided the grain be valued at the selling price since 1775, which, and not the converted prices, ought to be the rule, upon the same principle that, in late instances, the former had been adopted in fixing the prices payable by heritors to titulars in sales; 14th May, 1794, Ramsay Irvine against Maule, No. 86. p. 15698.

Answered: *1mo*, The conduct of the pursuers or their predecessors can be accounted for only from a deliberate intention to abandon their valuations, to which they must have been sensible there lay valid objections, which could easily have been substantiated, if the report had been founded on at an earlier period; and this, even without the aid of prescription, is sufficient to prevent the approbation.

2do, The legal conversion, and not the prices which grain may have accidentally borne since 1775, must be taken as the measure of the burden imposed by the locality.

The Lords, (20th June, 1798,) upon advising memorials, assoilzied the defenders.

And the cause having again come before them, upon a reclaiming petition, with answers and replies, it was

Observed: A party pleading dereliction of a sub-valuation has no occasion to go back for forty years. The right to have a report approved of, like the right of action on bills before the sexennial prescription was introduced, may be lost by circumstances, independently of the long prescription, which, indeed, does not at all enter into a question of dereliction. The claim of the pursuers is barred by the locality in 1775.

The Lords unanimously "adhered."

Act. Solicitor-General Blair, Robertson.

Alt. H. Erskine, Jo. Clerk.

D. D.

Fac. Coll. No. 125. p. 285.

1799. February 20.

LADY CHRISTIAN GRAHAM, and her Commissioners and Factor, *against*
 CATHARINE PATE, and Others.

No. 170.

The claim of a titular, for arrears of teinds, sustained to the extent of the valued teinds, from the date of a valuation obtained twelve years before, but rejected as to prior arrears, the precise amount of which could not be ascertained, although

an inhibition had been previously used, which, however had not been insisted on in due time. No. 170.

Fac. Coll. No. 153. p. 257.

* * This case is No. . p. . *voce* PRESCRIPTION.

1802. June 15.

COLQUHOUN *against* FERGUSON.

The parish of Luss being in ancient times a parsonage, the parson serving the cure was the titular of the teinds, and had right to them *proprio jure*.

In the year 1658, certain parts of the parish were disjoined, and erected into the separate parish of Arrochar, of which last, as of the former, the family of Colquhoun of Luss were patrons, and in that character acquired right under the acts 1690 and 1693, to the whole teinds not heritably disposed. Macfarlane of Macfarlane was proprietor of the estate of Arrochar, lying in the parish of Arrochar, the teinds of which were valued in 1629. The report with regard to Nether Arrochar bears, that Walter Macfarlane, heritor of the lands, John Colquhoun of Luss, the patron, and Mr. John Campbell, "parson and Minister of the said parish-kirk, of their awin assentis, are contentit, that the auld rental of the teinds of the said lands of Nether Arroquaire, stand in time coming as it has been thir forty years and maire by-past, to wit, 12 bolls tynd meal of paarsongetynds, with 412 merks money yearly."

This report was approved of by the high commission, and the valued teind was exhausted.

The proceedings as to the lands of Upper Arrochar, are dated 31st December 1629, at Dunbarton; and the record bears: "The qlke day, comperit John Macfarlane of Arroquaire, lyand within the said parochin of Luss, and John Colquhoun of Luss, patron of the said parish-kirks; and there the said heritor and patron, of their awin consent, are contented that the auld rental of the teinds of the said lands of Arroquaire, stand in time-coming as it is and has been thir monie years bypast, to wit, 400 merks."

Finding that the words "of the teinds;" are scored in the record, Macfarlane, upon the idea that 400 merks was the amount of stock and teind, obtained a decree of approbation in 1769, fixing the amount of the teind at 80 merks.

Ferguson of Raith purchased in 1785 the estate of Arrochar. The Minister of the parish soon after brought a process of augmentation, and stated, that instead of 80 merks, the lands of Upper Arrochar paid five times that sum in stipend. Ferguson then brought a new process of approbation, contended that the words "of the teinds," in the report, should never have been obliterated, and that the teinds should be declared to be 400 merks. To this the Minister objected, that the rental had not been fixed by proof, and that the Minister had not been made a party to the proceedings; that the consent of the heritor and patron

No. 171.

A decree of valuation which is reduced as to the Minister's right, upon an objection of his not having been a party, cannot remain effectual as to the other parties concerned.