

1739. July 18.

HERITORS OF CALDER *against* COLLEGE OF GLASGOW.

No. 139.

A loch being drained at great expense, and the soil brought to be arable land, the same was found not to come *in compute* in valuing the teind; for the Lords were of opinion, That where rent arises from an extraordinary improvement, the titular has no claim, as has frequently been found in the case of grounds improved by inclosing; and though here the question was with a singular successor, who had purchased the land after it was drained, yet it was considered, that if the ground, while the property of the person who improved the same, was not subject to teind, the transmitting of it to another hand could not subject it to a new burden. See APPENDIX.

*Fol. Dic. v. 2. p. 441.*

1743. December 7. LORD TORPHICHEN *against* HERITORS OF CALDER.

No. 140.

The Minister  
may sue a  
valuation.

What are  
relevant  
grounds of  
reduction?

Lord Torphichen, as patron of the parish of Calder, insisted in a reduction of a decret of valuation pronounced in the year 1647, *1mo*, On the ground, that it was at the instance of the parson, as titular; whereas a valuation ought to be at the instance of the heritors; *2do*, That there were many informalities in the decret, which showed that it was not properly a decret of valuation, but a locality; that a stipend was there localled; that it contained a prorogation in favour of Lord Torphichen of the teinds of his lands, which was inconsistent with a valuation; that teinds ought by law to be valued at a certain sum of money, or quantity of victual; but, in the present case, there was a horse and four cows grass allowed to the Minister on the wood of Calder, in part of Lord Torphichen's teinds. Answered, *1mo*, That a valuation may be raised at the instance of a Minister, as well as at the instance of the heritors; *2do*, That Lord Torphichen's having insisted for a prorogation of the tack of teinds, could not vitiate a decret of valuation, *quia utile per inutile non vitiatur*, especially as Lord Torphichen is pursuer of this process; that the cow's grass, &c. was not mentioned as part of Lord Torphichen's teinds, but as a prestation or servitude which the Minister had right to, and is ingrossed in the decret, which is not only a decret of valuation, but of locality, which are by no means inconsistent; or if they were, the locality, and not the valuation, would fall to the ground, because it is a summons of valuation on which it properly proceeds; *Lastly*, The deed is safe by prescription, as, in consequence of it, the Ministers have ever since drawn their stipend, the heritors possessed their tithes, improved their grounds, and most of the land, both stock and teind, has been sold to singular successors on the faith of this decret. The Lords unanimously repelled the reasons of reduction.

The Minister, as titular, may pursue a valuation of the teinds of the parish as well as the particular heritors. See APPENDIX.

No. 140.

*Fol. Dic. v. 4. p. 356, 357.*

1744. February 22. SIR ROBERT GORDON against DUNBAR of Newtoun.

Where teinds of certain lands have been drawn *ipsa corpora* by the titular, and mixed so with the teinds of other lands as not to admit a proof of the real quantity or annual value, the rule for ascertaining the value of these teinds, in a process of valuation at the instance of the heritors of the land, is, that the teinds be valued at the same rate as where a joint-duty is paid for stock and teind; that is, that they be valued at the fourth part of the rent paid to the pursuer for the stock; which comes to the same with the fifth part of the rent where that rent is paid both for stock and teind.

No. 141.

The rule for valuation where the teinds drawn *ipsa corpora* are mixed with the teinds of other lands.

*Rem. Dec. v. 2. No. 53. p. 82.*

1744. December 12.

DUKE OF ROXBURGH against SCOTT of Horslie Hill.

In the year 1685, the Minister of the united parishes of Morbottle and Mow, brought a process of modification against the titular and the heritors, concluding in the same libel a valuation of the teinds of the parish. With regard to this conclusion the libel runs thus, "That though by the good and worthy course intended by his Majesty, the teinds through the several parishes of this kingdom were appointed to be valued, yet the teinds of the parishes of Morbottle and Mow were not valued, whereby his Majesty was prejudiced of his annuity, and the pursuer frustrated of the benefit of augmentation; for remeid whereof, necessary it is that the teinds should be valued." Both articles of the process went on, a rental was given in by the Minister, and fixed by a reference to the oaths of the heritors who were held as confessed. The teinds were valued, and a separate decret of valuation was extracted; the decerniture, of which is in the following words; "and the said Lords decern and ordain the sums of money and quantities of victual above specified, to stand, continue, and endure, and to be repute and holden the just true and constant yearly worth and avail of the teinds, parsonage, and vicarage of the lands particularly above written *communibus annis*, in all time coming."

No. 142.

The Minister is one of those who by law can pursue a process of valuation.

It is not *per se* a good objection to a decret of valuation, that the heritor was not made a party to it.

As to the land of Mow, the heritor was not cited, but only his mother the life-rentrix. But the heritor acquiesced in the decree by making payment upon it.

In the year 1744, a process of modification and locality was brought at the instance of the Minister of the said united parishes against the heritors. For Scott of Horsliehill, one of the heritors, it was pleaded, that the teinds of his land were