

- No. 55. his own lands, even from that part of the stipend which had been immemorially paid out of them to the Minister. This was found, *1mo*, Because the act 23. Parl. 1693, makes no distinction, but allows, in general, patrons to exempt the teinds of their own lands; *2do*, From the nature of the thing, because, when a patron or titular has right to the whole teinds of a parish, it is equal to him how the stipend be paid, whether out of the teind of his own or other people's lands, for still he draws the remainder. An use of payment of this kind is as much *voluntatis* with respect to the titular, as it is with respect to the proprietor to lay the burden of the Minister's stipend, sometimes upon one farm, sometimes upon another. See APPENDIX.

Fol. Dic. v. 2. p. 443.

- No. 56. 1736. December 16. GREENOCK against GREENOCK.
Teinds fall to the heir of line, not to the heir of conquest.

C. Home.

* * This case is No. 8. p. 5612. *voce* HERITAGE AND CONQUEST.

- No. 57. 1738. February 1. DUKE of DOUGLAS against ELLIOT of Woolie.
A titular of the teinds of a whole parish having given to an heritor an heritable right to the teinds of his own lands, to be held of the titular himself, for payment of 100 merks yearly of teind or feu-duty, which was pretty near the sum that fell to be laid upon these lands in a proportional allocation of the stipend; in a process of locality, the Lords refused to allocate any part of the stipend upon this heritor, in regard it was implied in the transaction, that he was to have right to his own teinds, absolutely free from the burden of any part of the stipend; that it must be presumed he paid an adequate price for the same, and it would be making him pay a price for nothing, if, the next day, these teinds could be evicted from him, and allocated to the Minister. See APPENDIX.

Fol. Dic. v. 2. p. 442.

- No. 58. 1738. June 22. SINCLAIR of Freswick against GROAT of Wares.
Rate of teind.
—Deductions.
In a process at a titular's instance for the teinds of bygone years, who insisted for a fifth part of the rent the lands were worth for the respective years, and that, without regard to the rent payable by the tenant to the heritor, who, on account of *grassums*, or extraordinary services, as was said to be the fact in this case, might accept of less than the lands were worth, he might be allowed a proof of the true

value of the lands, by their sowing and holding, it was found, "That the fifth part of the rental must be the rule, and that the services cannot come *in compute* thereof."

No. 58.

In valuations and sales of teinds, poultry are never computed, even though the master have the option to take poultry, or so much money as the value. Neither are services ever computed in estimating the extent of teinds; and so it was determined in this case, although the rent paid was alleged to be a third lower, on account of the great services paid.

How teinds are to be valued in a sale of lands, *vide* February 23, 1749, No. 8. p. 13317.

Kilkerran, No. 1. p. 548.

1739. July 18.

HERITORS of the PARISH of CALDER *against* The COLLEGE of GLASGOW.

Where a loch was drained, at a great expense, and the soil reduced to arable land, the same was, in an action of valuation before the Lords, as Commissioners for Plantation of Kirks, &c. found not liable to teind; and that not only while the subject remained with the original drainer by personal exception till he should be repaid his expence, but that the exception was competent to the singular successor for ever; for that wherever a rent arises by an extraordinary improvement, so far the titular has no claim thereto.

No. 59.
Extraordinary improvements.

Kilkerran, No. 2. p. 549.

1744. December 8. KATHARINE COCHRAN *against* OLIPHANT.

The Lords, Commissioners for Plantation of Kirks and Valuation of Teinds, "found, That the Patron of a Provostry had right to the teinds thereof, in virtue of the 23. act, Parl. 1690, and act 25. Parl. 1693."

No. 60.

D. Falconer, v. 1. p. 23.

1745. June 25.

MR. ANDREW CHATTO, Minister of Morbottle and Mow, and the PATRON, *against* MOIR of Otterburn.

Every man who alleges a right to his own teinds must shew that his author had a right, unless he can plead prescription; and though teinds may be conveyed, and, before the Reformation, could not otherwise be conveyed than by tack, or other personal right, yet, when the question is of prescription, it is not plead-

No. 61.
Infestment in teinds necessary for prescription.