

which supported the argument maintained; and hence, either upon that case, as the precedent, or upon general principles, a *medium*, should, at all events, be taken between the old rent of the parks of Craig, and that for which they were now let on a nineteen years lease.

The Lords pronounced an interlocutor, "Finding, That, in this case, the parks of Craig must be stated at £.100 Sterling yearly of rent."

For Dalrymple, *D. Dalrymple*.

For the Earl of Eglinton, *W. Mackenzie*.

Fac. Coll. No. 94. p. 277.

1772. December 3.

JOHN SINCLAIR of Freswick against SIR JOHN SINCLAIR of Mey.

In the year 1729, William Sinclair of Freswick, as patron of the parish of Canisby, brought an action against the heritors of that parish; and, among others, against the defender's grandfather, for payment of the teinds of his lands within the foresaid parish; and, in the year 1731, obtained a decree against him, for payment of certain quantities of victual yearly, and in time coming, as the value of the teinds of said lands.

Freswick's right of patronage having been afterwards brought under challenge by the family of Mey, it was finally given in his favour; but the present Freswick, when he came to insist for payment of the teinds bygone, and in time coming, upon the foot of the foresaid decree 1731, having met with opposition from Sir John Sinclair now of Mey, upon various grounds, he brought a new action, to have it found and declared, that he had right to draw and uplift the *ipsa corpora* of the teinds of these lands, and that the defender should be prohibited and discharged from intromitting with, or away taking the same, &c.

On the other hand, Sir John Sinclair raised an action of valuation and sale of his teinds; and when Freswick, in terms of the conclusion of his action, came to insist to be put in possession of the teinds *quoad futura*, the defence was laid upon that clause of the statute 1693, Cap. 23, whereby, upon a recital, that "many times heritors intent actions for the valuation of their teinds, against the titulars and others having right thereto, of design only, that, upon pretence of a depending action of valuation, they may get a warrant for leading of their own teinds, and thereafter suffer the action for valuation to lie over, and do not insist therein; by which the titulars, and others having right to the teinds, are exceedingly prejudged: For remeid whereof, it is statuted and ordained, that any warrant to be granted hereafter, by the commissioners, to heritors, for leading of their teinds, shall endure only until a protestation for not insisting be obtained at the instance of the defender." And, therefore, as no such protestation had in this case been obtained, it was contended that the defender ought not so be dispossessed, or the pursuer let in to the drawing of the teinds themselves.

No. 154.

No. 155.

Where the patron, on the one hand, was insisting in a declarator, that he had right to uplift the *ipsa corpora* of the teinds of an heritor's lands, while he, on the other hand, was suing a valuation and sale of his teinds, the patron found not entitled to draw the *ipsa corpora*, for that the heritor, as becoming defender, is entitled to hold the possession, without the necessity of a warrant.

No. 155. The Lord Ordinary found, "That, in respect the pursuer has not obtained protestation in the process of valuation of teinds, raised by Sir John Sinclair, he is not entitled to draw the *ipsa corpora* of the teinds of the defender's lands; therefore assoilzies the defender, and decerns."

Upon a reclaiming petition and answers, the Court adhered to the Lord Ordinary's interlocutor, "so far as it finds that the pursuer is not entitled to draw the *ipsa corpora* of the teinds of the defender's lands." But it was upon a different medium. The act 1693 was not thought to apply to this case, as there was no warrant putting the heritor in possession of his teinds, on his pursuing the action of valuation; but then, on the other hand, there was no law for ouing the heritor of the possession of his teinds. It was even questionable if, in such a case, there is occasion for a warrant. The heritor becomes defender, and is entitled to hold the possession; and it is the genius of our law, that the heritor should draw his own teinds. Indeed, if there should be any *mora* on his part, the titular may have relief from the Court.

Act. *A. Lockhart.*

Alt. *M^cQueen.*

Clerk, *Kirkpatrick.*

Fac. Coll. No. 36. p. 95.

1772. July 22.

CHARLES FULLERTON of Kinnaber, *against* The NEW COLLEGE OF ABERDEEN.

No. 156.

Deductions
in a valuation
of teinds.

In this case, the Court upon advising memorials *hinc inde*, "sustained the deductions following, viz. of the rent of the Miln-eye of the over-miln of Kinnaber; the wauk-miln, snuff-miln, and ferry-boats on the north water of Esk, and houses, yards, and smiddy, possessed by David Scot, smith; and also of services and kains paid in kind; and likewise the butter, in respect the quantity is so small," being half a stone.

Act. *Al. Gordon, junior.*

Alt. *Jo. Douglas.*

Reporter, *Hales.*

Fac. Coll. No. 21. p. 60.

1773. August 4.

DUNCAN CAMPBELL of Glendaruell, ANGUS FLETCHER of Dunans, and Others, *against* The OFFICERS of STATE and Others.

No. 157.

The rule of
dividing a
cumulo valuation
of the
teinds of
lands in the
county of
Argyle, now
belonging to
different pro-

The teinds of the parish of Kilmoden, or Glendaruell, and of the adjacent parishes of Innerchelane and Strachur, were valued in the year 1629 by the sub-commissioners for the Presbytery of Argyle.

With regard to the lands contained in the report of the sub-commissioners, so far as now belonging to the parties in the present question, the use of payment to the Minister, as to some of these lands, was within the value of the teind, as ascertained by the said report. This was the case as to the lands of Glendaruell,