

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.