

No. 33. which was effectual to transmit the one, must be equally effectual to convey the other.

The Lords unanimously agreed that the teinds were not entailed. They were equally clear, that James Laurie's special service in the lands did not carry the teinds. It was, however, suggested, that the defender, by her service as heir to her uncle in the teinds, passing by her brother, who had been more than three years in possession, was, in terms of the statute 1695, liable *in valorem* of that subject.

The Lords accordingly "found the defender liable *in valorem* of the teinds." See TAILZIE.

Lord Ordinary, *Hailes*. Act. *G. Wallace, Honyman*. Alt. *Wight, Rolland*, Clerk, *Home*.
Fol. Dic. v. 4. p. 274. Fac. Coll. No. 148. p. 230.

SECT. VI.

Precept of CLARE CONSTAT.

No. 34.

1747. July.

SYMMER *against* DOIG.

MARGARET SYMMER, as standing infest upon a precept of *clare constat*, as heir to her predecessor in an annual-rent right, pursued an action of mails and duties of the lands, wherein Provost Doig, of Montrose, who stood infest in the lands on a title posterior to the constitution of the annual-rent, compared, and objected to the pursuer's title, that a precept of *clare constat* was not sufficient to instruct that she was heir to the annual-renter.

Answered for the pursuer, That though a precept of *clare constat* is not sustained as a proof of the propinquity with respect to any other subject, yet it is sufficient to complete the heir's title with respect to the subject wherein she is infest.

Replied, That an infestment on a precept of *clare constat* completes the feudal right without a special service; yet it has never been sustained to found a demand for payment without at least a general service.

This debate went no further than the Lord Ordinary, nor was any interlocutor given on it, the pursuer having, to prevent further trouble, served herself heir in general. But so however the law is thought to stand, that the personal obligation requires to its transmission a general service.

Kilkerran, (PRECEPT OF CLARE CONSTAT), No. 3. p. 414.