

No. 72. to challenge. With regard to the cases quoted for the pursuers, they are not similar to this case. In the case of Dun, the Minister of Maryton's possession was not founded upon a decree; and, *2do*, The interlocutor taking the teind-bolls from him was really of consent; and in the case of Inchtuir, the Minister had neither decree nor possession.

“ The Lords repelled the reasons of reduction of the decree of locality of Swinton; and also assoilzied the Minister and heritors of Swinton from the reduction.”

Act. *Pringle & D. Dalrymple.*

Alt. *Miller, Bruce, & Swinton.*

B.

*Fac. Coll. No. 184. p. 272.*

1756. July 24. DUKE of ATHOLE *against* The DUCHESS.

No. 73.

A proprietor who obtains a tack of his teinds from the Exchequer must communicate the benefit thereof to the liferentrix.

\* \* This case is No. 17. p. 7766. *JUS SUPERVENIENS, &c.*

1757. July 6.

JOHN HAY of Lawfield, and Others, *against* The DUKE of ROXBURGH.

No. 74.

Debated,  
Whether, in  
consequence  
of the Refor-  
mation, the  
patrons of be-  
nefices with-  
out cure be-  
came heri-  
table proprie-  
tors of the  
teinds annex-  
ed to these  
benefices?

The Duke of Roxburgh had right, by progress, to the patronage of the prebendary of Pinkerton. In a process of valuation and sale brought by John Hay and others, the tithes of whose estates belonged to that prebendary, it was insisted for the Duke, That the price of the surplus teinds must be rated at nine years purchase; for that, as patron of this prebendary, which was not a benefice of cure, he had a full right to the tithes, prior to the acts of Parliament 1690 and 1693: That the tithes of benefices *sine cura* returned to the patrons after the Reformation *pleno jure*; but as, at that time, tithes were considered sacred, the patrons of Provostries and Prebendaries were, by act 12. Parl. 1657, allowed and requested to present bursars to such benefices; but that act of Parliament laid no positive injunction upon the patrons to apply the tithes of their benefices to these uses. In process of time, though the form of presentation was kept up, the presentee was understood to be but a name, with whom the patron, without being guilty of simony, might paction for the whole profits, for behoof of the patron himself: And at last, these forms were omitted, and the patrons of these benefices without cure were understood to have an heritable right to the tithes, Upon this footing, the teinds of Hedderwick, lying in the same parish of Dunbar, were rated, in the year 1679, at nine years purchase; and, in the year 1724, Sir Hew Dalrymple, then President of the Court of