both to colleges and Ministers, though not specially decerned so to do. As it belongs to the Court of Session to award execution on decrees of valuation; so where there is no place of delivery specified in the decree, it must be inherent in the jurisdiction committed to the Session to determine the place of delivery; and in doing so, the common rule as to the *locus solutionis* must give way to other considerations applicable to this particular case. No. 75.

The Lords found, That the suspenders were not obliged to transport their teind-victual to a market-town."

For the College, *Burnet, Miller, Advocatus.* Alt. *Sir Dav. Dalrymple, Ferguson.*
Reporter Woodhall.

D. R. *Fac. Coll. No.* 121. *p.* 222.

1759. *February* 21.

HERITORS of the Parish of INVERNESS *against* The MAGISTRATES and TOWN-COUNCIL of INVERNESS.

No. 76.
Grounds gained from the sea by building walls, are not subject to pay teinds.

In the process of augmentation and locality, at the instance of the Ministers of Inverness against the heritors of that parish, the following question occurred betwixt the magistrates and Town-Council and the other heritors, viz. Whether certain lands gained off the sea by the town in the year 1746, were teindable, and ought to be assessed with payment of part of the stipend to the Ministers?

Pleaded for the town: This piece of ground was formerly a salt marsh covered by the sea, till about the year 1746, that the town built very high dikes round it, in order to keep out the sea, by which means it came to be so improved as to yield £.183 12*s.* Scots of rent: That this acquisition was made at a very great expense, in proportion to the value of the ground; and the annual expense of supporting the dikes, which, from the damage occasioned by the sea, required constantly to be repaired, was also very considerable; and this improvement was in daily hazard of being totally undone by the sea's breaking through the bank; and therefore the £.183, 12*s.* now paid to the town, could not be said to be a constant and certain rent, which is a requisite by law in all estates out of which the fifth part is to be claimed in name of tithes: That it was now a fixed point in the practice of the Court, founded on the most reasonable principles, that subjects of this sort, which have been acquired at an unusual expense cannot be subjected to the payment of tithes; as has been decided in a variety of cases. Thus a loch having been drained at a considerable expense, whereby the ground formerly covered with water, having become arable and good, in the locality of the parish of Calder, within which the ground did lie, the question occurred betwixt the proprietor of the loch and the other heritors, whether it was to be subjected to the payment of tithes? And the Court, on the 11th July 1739, found, That such piece of ground could not be subjected to the payment of tithes. The reasons for exempting the town's new improvement, in the present case, is much stronger than occurred in that of the loch, as must be evident from the facts before specified. See APPENDIX.

No. 76.

Answered for the heritors, The reasons assigned are no wise sufficient to justify the demand of an exemption. These lands have yielded a constant fixed rent at least for these thirteen years past, and may yield the same or a greater rent in time coming, if not swallowed up by the sea; but this bare possibility is so extremely remote, and the real danger so very small, that no regard ought to be had to it. Extraordinary calamities may happen, and grounds may be destroyed by earthquakes, inundations, and overblowings of sand; and when such things occur, they may entitle the possessors of these lands to a total or partial abatement of the proportion of stipend formerly paid by them. But, in the mean time, as the town receives the benefit of the ministry, there is no good reason why they ought not to pay for the support of it, as well as the other heritors, whose lands are also liable to accidents, as all human things are. Any expenses which have been laid out in gaining the ground off the sea, have been abundantly compensated by the profits which have thereupon arisen; and whatever consideration has upon some occasions been had of recent expences of this sort in valuing teinds; yet this has never been transferred to processes of augmentation and locality. And the reason of the distinction is manifest: A titular's plea is unfavourable, more particularly when he is grasping at lands which properly had not a being when his right as titular commenced; and such was the case as to the loch of Calder, which occurred in a valuation of the teinds, not in a locality of the stipend. But where lands have stood at a constant fixed rent for thirteen years, and that rent now as sure and permanent as of any lands whatever, upon the small expense of supporting the sea-dikes, it is against law and reason, that the proprietors of such lands should not pay their proportion for the support of the Ministers.

Replied for the Town: As the question is, Whether a piece of ground is to be at all liable in payment of tithes, so as to be the subject of localling a stipend? there can be no doubt but that can be properly tried in a process of locality: And, therefore, the decision with respect to the loch having been in a process of valuation, does not vary the cases; because, out of whatever subject a titular has no claim to tithes, a Minister can have no claim to stipend. If there is at all any reason for not allowing deductions on account of inclosing, and other improvements, in processes of augmentation and locality, it lies in this, that the heritor has himself to blame for not having got the extent of his teinds ascertained by valuation. But, in the present case, the Town of Inverness could not obtain a valuation of the tithes of this new improvement; because they apprehend no tithes are due out of them. And, therefore, the only thing to be done in such a case, is to plead the point of law, whenever any claim is made to the tithes of grounds under such particular circumstances, in the same manner as an heritor would be entitled to do as to rents arising from a quarry, coal, mill, or other such unteindable subject.

The Lords found these lands gained off the sea not teindable.

Act. *Montgomery.* Alt. *W. Steuart.* Reporter, *Shewalton.*

G. C. *Fac. Coll. No. 175. p. 312.*