

it is an inseparable quality of tithes of all sorts, that they import no restriction upon proprietors in the cultivation and management of their grounds. No. 125.

At all events, the claim could reach only to sown grass growing on Warlie meadow, there being no proof of the tithe of bog-hay having been drawn from any other part of the parish; 29th November 1678, Birnie, No. 1. p. 2489.

Several of the Judges were for supporting the pursuer's claim. It is hardly possible (it was observed) to draw the line between one sort of hay and another; and by such a distinction, the payment of teinds from hay might be entirely evaded, merely by throwing a few seeds among natural grass.

A considerable majority were, however, for refusing the desire of the petition. All attempts (it was said) to extend the right of the titular are justly unfavourable. Bog-hay is a different species from artificial grass, and teinds admit of no *surrogatum*.

The Lords "adhered."

Lord Ordinary, *Eskgrove*. Act. Arch. *Campbell, junior*. Alt. *Rolland*. R. *Hodgson Cay*.
Clerk, *Home*.

Fac. Coll. No. 223. p. 522.

SECT. IV.

Valuation.

1632. *March*.

DOUGLAS against L. EDNEM.

In an action for wrongous intromission with the teinds of Ednem, of the crop 1631, the Lords sustained this action, and decerned according to the quantity of the teinds proved; albeit the defender alleged, that he intromitted according to a warrant of the High Commission, giving him power to intromit, he finding caution to pay the quantity to which the teinds should be valued, as use is in that Commission; likeas the teinds are valued, and the valuation approved by the Lords of the Commission, and he is content presently to pay the quantity, whereto it is valued; and therefore he alleged, that the decree ought to be restricted to that quantity, and no further ought to be decerned. This alleigance was repelled, and notwithstanding thereof the quantity proved was decerned, and the prices, but the smallest quantity that was proved was decerned; and this was so found, seeing the pursuer had not submitted, so that the act of the Commission could not astrict him; albeit the defender alleged, that if the Lords of the Commission had not given him the warrant to meddle and lead the teind, he would not have intromitted therewith; which was not respected, seeing he sought that warrant

No. 126.
Effect of valuation.

No. 126. upon his own peril and hazard. And this is the first decision where the quantity proved was decerned, notwithstanding of the warrant to lead from the Commission, and notwithstanding of the approving of the valuation.

Act. *Stuart, & Craig.*

Alt. *Nicolson.*

Clerk, *Gibson.*

Durie, p. 651.

1639. *March 8.* HEASILHEAD *against* HIS TENANTS.

No. 127.

Rentallers found not entitled to pursue a valuation.

Some tenants to the Laird of Heasilhead, being rentallers of some of his lands for their lifetimes, and the life of the setter, for payment of a certain duty therein contained for the lands, and for paying of the teind-duty, as should be imposed, obtain decret before the Lords of Session against their Master, setter of the rentals, and who had acquired right to the teind from the titular, according to a valuation of the teinds tried and estimated before the Commission, finding that they should bruik the teinds of their lands set to them in rental, for payment of their proportion of the valued bolls. This decret was desired to be reduced, by reason that by virtue of the said Commission, the benefit of valuation of teinds, is by no clause of the Commission, conceived in favours of tenants of other heritors' lands, who are but naked rentallers, and rentallers only during the lifetime of the setter and receiver conjunctly; for that clause of the Commission, concerning life-renters, is only to be understood of life-renters by virtue of infeftments, as conjunct fee, and other sicklike right; and therefore these rentallers could never have had interest to pursue such an action, and to crave the benefit of the valuation of teinds. The Lords found the reason relevant, and reduced the decret; for the Lords found, this Commission of teinds contained no clause in favours of any rentaller of land, which ought to give them right to claim the benefit of valuation of teinds, but when any action should be pursued against the rentallers, for their teinds, the Lords declared that they would have consideration of the rentals, and what should be in equity paid by them for their teinds.

Alt. *Maxwell.*

Clerk, *Scot.*

Durie, p. 881.

1661. *December 11.* The EARL of ROXBURGH *against* MACDOWAL of Stodrick.

No. 128.

Exorbitant valuation.

The deceased Earl of Roxburgh, having obtained decree of the Commission, for the valuation of teinds, *in anno* 1635, against Macdowal of Stodrick, this Earl having right from the deceased Earl, pursues Stodrick for payment of the valued duty. The defender alleged, no process, because he had intented reduction of the said decree, and improbation of a procuratory mentioned therein, to have been produced by Mr. Robert Trotter, warranting him to consent for Stodrick to that.