

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.