No. 7.

'rochialis de Leslie, sicuti Naper, relicta quond. Johannis Martinle de 'Raith militis terras, virtute suæ assedationis de præsenti gaudet, 'et per alios tenentes earundem ultra hominis memoriam perprius 'gavis. et possess. fuerunt extenden. annuatim, nostro in rentali, in firma et 'grassum a omnibusque aliis proficuis, decimis garbalibus, etiam in iisdem in- 'clusis et computatis, existen. ad summam decem librarum usualis monetæ 'regni Scotiæ: Tenendas et habendas, totas et integras prænominatas terras, 'liberas ab omni solutione decimarum garbalium,' &c.

The minister of the parish had been in use to draw 8*s.* $6\frac{6}{12}$*d.* of vicarage, but no further stipend from the lands.

Lord Glenlee Ordinary, repelled the claim of exemption. Melville reclaimed, and further produced a charter in 1568, confirmed by the Crown in 1584, conveying the lands 'cum decimis garbalibus earundem inclusis, quæ 'adhuc nunquam a stipite separatæ fuerunt, sed junctim cum fundo locaban- 'tur.'

The Court considered the charter 1550, particularly when explained by the subsequent production, as sufficient to support the claim, and gave judgment accordingly.

D. D.

1800. *March 5.*

SIR RALPH ABERCROMBY, *against* JOHN FRANCIS ERSKINE.

No. 8.

One heritor in a parish has no title to insist in a reduction of a decree of valuation obtained by another, although, in consequence of it, an additional burden of stipend has fallen on the pursuer's lands.

IN the locality of the parish of Alloa, John Francis Erskine produced a valuation of his teinds by the sub-commissioners in 1630, and an approbation by the Court of Teinds in 1782.

His teinds, according to this valuation, were exhausted by the old stipend; and in a scheme of locality for proportioning an augmentation, no part was laid on him, while a considerable burden was imposed on Sir Ralph Abercromby.

Sir Ralph objected, *inter alia*, that the report of the sub-commissioners was null, as the minister of the parish had not been made a party to their proceedings, and as it had been afterward derelinquished.

The Lord Ordinary sustained the objections.

In a petition, Mr. Erskine disputed the pursuer's title.

The Court (8th February 1797) '*in hoc statu*, found the decree of approba- 'tion and valuation must be the rule for allocation.'

Sir Ralph reclaimed, and at the same time raised a reduction.

The defender still objected to his title, and the Court ordered the question to be argued in memorials.

The defender.

Pleaded: The only parties having a proper patrimonial interest in teinds are the heritor of the lands, the titular, and minister, or rather they belong to

the two last, and must be paid to the titular, or retained by the heritor in his right, unless in so far as they have been allocated for the stipend of the minister; accordingly the titular and minister are the only parties who are called, or can appear, as defenders in a valuation. Other heritors have no direct interest in the teinds, though in future localities they may be materially affected by the valuations obtained. This interest, however, is remote and contingent; and as it has not been held sufficient to make them parties to the original process, it cannot entitle them afterwards to reduce it. No. 8.

In defence of a right of property, a party may complain of any act from which he apprehends injury, however remote. He may obtain an interdict against its being done, or caution *de damno infecto*. But the pretended ground of action here, is very anomalous, and is supposed to operate, not to prevent the decree, the source of the injury, but to give a right to complain only when its effects are felt, and which again depend upon the existence of a future locality, an event quite independent of the pursuer, and which may not occur at all till the right to challenge the decree be cut off by prescription.

Such contingent interests are never sustained. Every member of the community, for example, has an interest that his neighbour should pay his due proportion of taxes; but this would not entitle him to appear in a revenue question, and contend that his neighbour's assessment was too small.

If the present action be competent, every other heritor of the parish might bring a separate process, and the matter would not be at rest till they had all done so.

Answered: As, in localities, free teinds are exhausted before those possessed on heritable rights; and when valuations have been obtained, the valued teind duty only can be taken, instead of a full fifth of the rent; heritable rights, and decrees of valuation, are of material consequence to other heritors, as well as to those who possess them; and therefore, though other heritors need not be called as defenders in valuations, it does not follow that they may not object to them, when they are founded on, to the effect of subjecting them to a greater burden. It would be hard that they should be irrevocably affected by proceedings to which they were not parties, and of which they may have been ignorant. The decree may have been pronounced by an incompetent judge, or may be liable to other radical objections appearing *ex facie*. The mere name of a decree will not bar investigation. But the difference between one species of defect and another is too thin to affect the title to complain, though it may vary the mode of objecting. In one case, it may be stated incidentally, while, in another, the form of reduction may be necessary.

In many other cases, a person may set aside a decree, to which he was not necessarily a party. The superior may bring a reduction of the vassal's right, without calling the sub-vassal; and the right of the latter will fall by the certification pronounced in it, but he may afterward bring a reduction; January 27, 1676, Bishop of Caithness against Innes, No. 47. p. 14062. In a process

No. 8. for division of *cumulo* valuation, every heritor need not be called; yet any one may reduce the decree of the Commissioners of Supply, if it improperly increase or diminish his own valued rent; Wight, B. 3. C. 2. p. 185; and any freeholder may object to their decree, as evidence of a claim of enrolment; March 10, 1774, Ross against Mackenzie, No. 77. p. 8663; and 16th June 1774, Earl of Fife, &c. against Duke of Gordon, &c. No. 228. p. 8850. In divisions of commonties under the act 1695, C. 38, the proportions of heritors are ascertained according to their valued rents; and it would be competent for one heritor to shew, either by exception or reduction, that the decree of the Commissioners of Supply, fixing the valued rent of another, is erroneous.

Suppose an heritor's valuation to be £1000, situated in two different parishes, and that he should obtain a decree of division transferring £900 to one parish, and leaving £100 in another, though the real rent was equal in both; the other heritors in the latter, if a church were to be built in it, would be entitled to object.

And, upon the same principles, heritors have been allowed to investigate valuations or heritable rights of teinds founded on against them; 29th January 1783, Heritors of Auchtermuchty against Balfour, (not reported;) 26th January 1785, Hepburn of Humbie, &c. against Earl of Hopeton, &c. (not reported;) 25th February 1795, Leslie against Earl of Kintore, &c. No. 165. p. 15770.

Replied: The defender does not admit the title to pursue in all the cases put by the other party. In those of them which have been sanctioned by decisions, the complainers had a right of property in the subject of the original action; or, in the case of freeholders complaining of a decree of the sub-commissioners, as evidence of a claim of enrolment, they had, by statute (16th Geo. II. C. 11.) a right to investigate the evidence of the claims made to them.

The Court, in substance, adopted the argument of the defender; and, it was observed, that in the case of Auchtermuchty, the decision hinged upon the fact, whether the paper there produced gave an heritable right to the teinds: that in the case of Humbie, the objection was collusion; and in that of Leslie, the patron was one of the objectors, which made the title unexceptionable.

The Lords assoilzied the defender, and adhered to the former interlocutors; and, on advising a petition, with answers, the same judgment was repeated,

Lord Ordinary, *Ankerville.* Act. *Rolland, W. Robertson.* Alt. *H. Erskine, Jo. Clerk.*

D. D. *Fac. Coll. No.* 169. *p.* 385.