The Minister, as titular, may pursue a valuation of the teinds of the parish as well as the particular heritors. See APPENDIX. No. 140.

Fol. Dic. v. 4. p. 356, 357.

1744. *February* 22. SIR ROBERT GORDON *against* DUNBAR of Newtoun.

No. 141.
The rule for valuation where the teinds drawn *ipsa corpora* are mixed with the teinds of other lands.

Where teinds of certain lands have been drawn *ipsa corpora* by the titular, and mixed so with the teinds of other lands as not to admit a proof of the real quantity or annual value, the rule for ascertaining the value of these teinds, in a process of valuation at the instance of the heritors of the land, is, that the teinds be valued at the same rate as where a joint-duty is paid for stock and teind; that is, that they be valued at the fourth part of the rent paid to the pursuer for the stock; which comes to the same with the fifth part of the rent where that rent is paid both for stock and teind.

Rem. Dec. v. 2. No. 53. p. 82.

1744. *December* 12.

DUKE of ROXBURGH *against* SCOTT of Horslie Hill.

No. 142.
The Minister is one of those who by law can pursue a process of valuation.

It is not *per se* a good objection to a decreet of valuation, that the heritor was not made a party to it.

In the year 1685, the Minister of the united parishes of Morbottle and Mow, brought a process of modification against the titular and the heritors, concluding in the same libel a valuation of the teinds of the parish. With regard to this conclusion the libel runs thus, "That though by the good and worthy course intended by his Majesty, the teinds through the several parishes of this kingdom were appointed to be valued, yet the teinds of the parishes of Morbottle and Mow were not valued, whereby his Majesty was prejudiced of his annuity, and the pursuer frustrated of the benefit of augmentation; for remeid whereof, necessary it is that the teinds should be valued." Both articles of the process went on, a rental was given in by the Minister, and fixed by a reference to the oaths of the heritors who were held as confessed. The teinds were valued, and a separate decreet of valuation was extracted; the decerniture, of which is in the following words; "and the said Lords decern and ordain the sums of money and quantities of victual above specified, to stand, continue, and endure, and to be repute and holden the just true and constant yearly worth and avail of the teinds, parsonage, and vicarage of the lands particularly above written *communibus annis*, in all time coming."

As to the land of Mow, the heritor was not cited, but only his mother the life-rentrix. But the heritor acquiesced in the decree by making payment upon it.

In the year 1744, a process of modification and locality was brought at the instance of the Minister of the said united parishes against the heritors. For Scott of Horsliehill, one of the heritors, it was pleaded, that the teinds of his land were

No. 142. already valued in the above mentioned decree, and no place for valuing them over again. It was answered for the Minister, or rather for the Duke of Roxburgh the titular, that the said decree, in which the Minister was the pursuer, was intended for no other effect but to pave the way to a modification; and that a valuation at the instance of a Minister, who has no further interest than to obtain a modification, can never have the effect to settle a perpetual value upon the teinds, to be a rule among all parties concerned. *2do*, That the said decree is null *quoad* the lands of Mow, now belonging to Horsliehill, because the proprietor was not called.

Replied to the first, Where the Minister brings a proof of the value of the teinds in a parish, merely to obtain a modification, such a valuation can have no effect other than what is intended; but that the valuation 1635, was intended to be a proper decree of valuation, is clear both from the libel and decree. The only question then is, Whether a proper process of valuation brought by the Minister can have the effect that is intended by it? which question receives an easy solution from the act 19. Parl. 1633, empowering, in effect, the Minister to pursue a valuation; because he cannot have a modification till the valuation of the parish be first closed. In support of this argument, a condescendence was produced from the records of several such processes at the instance of the Minister.

Replied to the second: It is a mistake to put a valuation of teinds upon the foot of judicial proceedings; there are frequent examples of valuations at the instance of the Commissioners themselves, without any prosecutor; and though it was rational and equitable to call all parties concerned, the citation of parties was no necessary solemnity; the heritors who are not called, have access to complain of an unequal valuation; but it is absurd to maintain, that a decree of valuation, at the instance of a Minister, however fair and just, is no rule to an heritor; and that an heritor cannot even take the benefit of it, but must take the precise same steps over again in a new valuation at his own instance.

"Sustained the decree of valuation, though the Minister was the only prosecutor. And the said act 1633 was what principally moved them to pronounce this judgment.

Lord Elchies observed, that it was the design of the Legislature to force valuations by all reasonable means; and to this end that this burden was laid upon Ministers, under the certification, that they should not have otherwise access to a modification; and that the act 30. Parl. 1641, shows this to have been the case, in which act the commissioners are empowered to modify after closing the valuation, "or at least exact diligence of the Minister to that effect."

Rem. Dec. No. 61. *p.* 96.

*** Kilkerran reports this case:

In the process of valuation, modification, and locality, pursued at the instance of the Duke of Roxburgh, titular and patron of the united parishes of Morbottle and Mow, and Mr. Andrew Chatto, Minister of the said parish, before the Lords, as

Commissioners for plantation of kirks and valuation of teinds, there was produced for Scot of Horsliehill, one of the heritors, a decree of valuation in the year 1635, obtained at the instance of the then Minister, decerning and declaring the same to continue and endure, and to be reputed and holden the just, true, and constant yearly worth and avail of the teinds, parsonage, and vicarage of the lands, in all time coming, and at the same time modifying the stipend. No. 142.

To which it being objected for the pursuers, that as at no time was it ever competent to the Minister to pursue a valuation to any other effect than in order to fix his stipend, so this decree, which could import no more than that such should be held to be the value of the teinds in all time coming *quoad* the Minister, could not bind the titular; and accordingly the Lords at first, upon the 20th of June, 1744, on report, found, "That the decree of valuation 1635, being only at the instance of the Minister in order to the fixing of his stipend, cannot be the rule for establishing the valuation of the teinds therein mentioned between the titular and the heritors; and therefore found that they might still be valued at the instance of the titular."

The reasoning which at this time prevailed with the Lords was, that the plan of the statutes is, 1*st*, That every heritor should have the leading of his own teinds; 2*dly*, That, in consideration thereof, the heritor should pay an annuity to the Crown out of the value of the saleable teinds; 3*dly*, That the heritor should relieve the titular of the Minister's stipend of that part of the teinds which was not saleable;—and that, pursuant thereto, as on the one hand the heritor was allowed to bring a process of valuation against the titular, in order to a purchase of his own teinds, and, as the law now stands, that he may be subject only to a proportion of the stipend; so, on the other hand, the titular was allowed to bring a process of valuation, in order to subject the heritor to the Minister's stipend, and to settle the surplus payable to himself; and that such valuations, when concluded, were binding not only on the heritor and titular, but also upon the Crown for the annuity, and the Minister for his stipend, except where the Crown or the Minister could prove collusion, which was declared to be where the teinds were undervalued a third. But that as the statutes gave no authority to the Crown to bring a valuation of the teinds, in order to fix the annuity, when, by the very act anent the annuity of teinds, it is provided, that until teinds be valued, his Majesty's annuity shall be uplifted according to the fifth of the constant rent, so neither do they give the Minister any authority to bring a valuation; the fifth part of the rent is also as to him held to be the teind in order to his modification and locality; and if on proof brought of the rent, the fifth part afford a sufficient stipend, it is all he wants; he has no interest in the precise extent of the teinds, and therefore no authority to fix the value to any other effect than to ascertain his own interest.

But, upon advising petition and answers, and after hearing in presence of this date, the Lords "Altered their former interlocutor," and "Sustained the decree of valuation," though only at the Minister's instance, moved by the following observations:

No. 142. That it was plain, by the act 1633, no stipend could be modified, till the teinds were first valued. The words are, " And sicklike, with power to the said Commissioners, after the closing and allowance of the valuation of ilk kirk and parochin," to modify a constant and localled stipend. And accordingly, while matters stood upon the footing of that act, there is no instance of a modification without a valuation, sometimes obtained in a different process, sometimes *unico contextu*, as in this case. That in the rescinded act in 1644, to that clause in the act 1633, that there must be first a valuation, &c. it is added, " or diligence used for obtaining of the same;" which plainly supposes that the Minister had power to pursue such valuation. But afterwards, neither in the act 1661, nor in any of the subsequent statutes, is there any such thing at all required as a preceding valuation; which accounts for the present practice, and which has now for a long while obtained, by which, in the process at the Minister's instance, there is only an enquiry into the extent of the teinds *ad effectum* of modifying the stipend, without any mention made in his libel of the necessity of a previous valuation.

Kilkerran, No. 3. p. 549.

1745. *February* 6.

SIR JOHN MAXWEL of Pollock *against* The COLLEGE of GLASGOW.

No. 143.
Rents how stated in valuations.—Mill-rent.

In the process of valuation, Sir John Maxwell against The College of Glasgow, the Commission found, December 5, 1744, That where a rent had been improved by inclosing, the old rent was to be the rule, and that the improved rent was to be deducted in the valuation. And it had been formerly found in a variety of cases, that wherever an advanced rent is produced by expensive improvements, such advanced rent is no teindable subject.

In the same process it was also found, that where there had been grassums got at setting tacks of nineteen years, the 19th part of such grassums was, in the valuation, to be added to the rent.

A third point occurred which was of more difficulty. Certain of the lands had been formerly astricted at a very high multure to the mill of Patrick, belonging to the Bishop of Glasgow; this multure was thereafter purchased by the then heritor, and in lieu thereof an agreement made for 15 bolls dry multure to be paid yearly in lieu of all payments at the mill, other than the small dues of bannock and knaveship. And the question was, Whether the pursuer was to have deduction of this dry multure?

On the one hand it was said, that where the titular draws the teind, he draws the full tenth without any diminution on account of multures, however high; but where teinds are not drawn, and the fifth part of the rent is the rule, then, as the heritor gets so much the less rent on account of the multures paid by the tenants at the mill, the fifth part of the rent is the teind, without including the multures. And though in place of the multure at the mill, there may be an agreement with