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 That in the rescinded act in 1644, to that clause in the act 1633, that there must be first a valuation, &c. it is added, " or diligence used for obtaining of the same;" which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

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the heritor to pay so much dry multure, whereby the heritor comes to get a higher rent from the tenants, yet the dry multure falls to be deducted therefrom in the valuation, for the same reason, that while the multure continued to be paid at the mill, these multures were not computed in the valuation. For, as in the one case the multures paid at the mill were no part of the heritor's rent, so, in the other, the dry multure paid substracted so much therefrom.

On the other hand, it was argued, that adhering strictly to principles, even where a high multure is paid by tenants at the mill, to which they are astricted, whatever these multures exceeded the rent paid to the heritor, was, in a valuation, to be added to the rent. But, supposing that doubtful, it was said to admit of no doubt, but that where such multure was purchased by the heritor, who thereafter gets so much more rent, there is from that time no deduction to be made in the valuation on account of such measure, as what had been once paid at the mill; for thereby the lands are become free of multure, as if no such thing had ever been; and were it otherwise, one had nothing to do, but to astrict his lands at a high multure to another man's mill, and thereafter purchase back the multures, and then plead a deduction in a valuation. And that neither did it alter the case, that this purchase was made not for a sum of money paid down, but for a dry multure yearly paid to the superior in lieu thereof; for such dry multure, however it substracted from the rent paid to the heritor, was no better pretence for a deduction than a feu-duty would be, which nobody pretends would afford a deduction.

Notwithstanding, the Lords, by their interlocutor of the 5th December, 1744, thereafter adhered to the 6th February 1745, "Sustained the deduction."

It appeared to be the opinion of the Court, that had the multures been purchased for a price paid, there could have been no deduction allowed; and even as the case stands, the interlocutor adhering was given by the narrowest majority.

Kilkerran, No. 4. p. 551.

Feb. 1. and June 20, 1744. and Feb. 6. 1745.

FEUERS of DALKEITH *against* the DUKE of BUCCLEUGH.

No. 144.
Price of manure, if deducted.

In the valuation pursued by the feuers of the lordship of Dalkeith against the Duke, the Commission, by their interlocutor of the first date, by the president's casting vote, found, "That no deduction was to be given upon account of the dung of the town of Dalkeith purchased by the feuers;" but by their interlocutor of the 2d date, by a majority of 7 to 6, found, "there ought to be a deduction given" on account of the dung, and remitted to the Ordinary to hear upon the quantity; and again by the like majority of 7 to 6, returned to their first interlocutor, and "found no deduction due."

Notwithstanding it was argued for the feuers, that a deduction was always due, wherever the manure is purchased not merely by hand labour, which is the case