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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

No. 144. of sea-ware, but by money; for the rent raised by such manure is not in reality the produce of the ground, but of the tenant's money. *2dly*, A deduction is always due, when it does not depend upon the will of the tenant, whether he will continue the same improvement used in time past; for that it were unjust to rate the constant value from what it at present is, when its continuance to be of the same value depends upon the will and pleasure of other people. That *3dly*, Such deduction as was here insisted for, has been in use to be given since the first institution of the Court, and that it would look very odd, to see us put a different construction upon the statute, rating the teinds at the fifth part of the constant rent, from what our predecessors, recently after the date of it, put upon it; not to mention the variety of later decisions, which uniformlyallow deduction on account of the dung of an adjacent town.

What the plurality proceeded on was, that where tenants take the ground and pay the proved rent, they have the expense of purchasing dung in view, and that therefore the only solid foundation for a deduction is, where the expense is laid out by the heritor and not by the tenant. That farther, the present rent is the rule of buying and selling the property, and why should it not also be so in rating the teinds? And last of all, it was taken for granted to be next to a certainty that the benefit of the dung was what would continue.

But considering the above variety of judgments, and narrow pluarlity by which they were given, this point cannot be considered as yet settled. One thing must be owned, that had the relevancy been sustained, it had been very difficult to ascertain the *quantum*, as it appeared by the proof, the acres were of different rents, and that some took better, some worse, with dung, and doubtless a new and more particular proof adapted to the several acres had been necessary.

Kilkerran, No. 5. p. 552.

*** D. Falconer reports this case:

In a question between the feuers of Dalkeith, concerning the valuation of their teinds, and the Duke of Buccleugh titular, the Lords Commissioners found no deduction was to be allowed on account of the dung of Dalkeith.

D. Falconer, v. 1. p. 66.

1746. *July* 30.

MURRAY of Philiphaugh, and WATSON, *against* LORD BLANTYRE

No. 145.
Reports of valuation of teinds made by the sub-commission 1632 can be approved of.

John Murray of Philiphaugh, and William Watson, Writer to the Signet, pursued a valuation of the teinds of their lands of Pilmuir, in the parish of Bolton, in the shire of Haddington, against the Lord Blantyre titular, and produced a decreet of the sub-commissioners of the said parish *anno* 1632, which they craved to have approved.