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.

Objected for the defender, that the commission under which these sub-commissioners acted, proceeded from the King without any act of Parliament; and it was then thought that commission might overtake the business of valuing all the teinds in the kingdom, which however it did not, and therefore a parliamentary commission was granted 1633, with power to receive the reports of former sub-commissioners, to the end that heritors might have the opportunity of buying their own teinds; but still this was looked upon as a business to be speedily determined, in so much that by the decreet arbitral the faculty of buying was limited to expire at Martinmas 1635. No. 145.

That a like commission was granted *anno* 1661, but in those granted afterwards there was no power to receive the reports of former sub-commissioners; and accordingly, from the Restoration to the Revolution, there did not appear any such report approved: And though the commission 1690 was in some respects more ample than those granted before it since 1661, yet with respect to the present question, it only gave power to receive the reports of its own sub-commissioners, and the Lords had now no more power than was competent to former commissions.

Answered, it had been the constant custom of the Court to approve the reports of the sub-commissioners under the former commissions.

The sub-valuation of the Presbytery of Dalkeith 1630 was approved 3d June 1713, at the instance of Sir John Clark and Sir David Forbes.

The kirk-lands of Dunse and lands of Grueldykes 1629, approved 23d June 1714.

The barony of Cockburn and lands of Westshiell, approved 30th June 1714.

Lands of Manderston, 28th July *eod.*

Hay of Drummelzier against the Earl of Lauderdale, 5th July 1721.

Sir Alexander Cockburn, 29th November *eod.*

Duke of Douglas against the purchasers of Panmuir, 16th January 1723.

The lands of the abbey of St. Bachans, in the parish of Dunse, valued 1629, approved 5th February 1724, at the instance of Home of Abbay.

Valuation of the presbytery of Kirkaldy, approved 26th January 1726.

Bothkennar, in the Presbytery of Stirling, approved 3d July 1734.

Replied, that most of these precedents were in absence, or upon consent; and in that of Sir John Clerk, which was the leading case, an objection was repelled, that prescription was run since the sub-valuation, but the objection now insisted on was not made.

The Lords Commissioners approved of the report.

D. Falconer, No. 139. *p.* 174.

1747. *July* 14. CLARK *against* The DUKE of QUEENSBERRY.

No. 146.
The rent paid is the rule in

George Clark of Middlebie pursuing a valuation of his teinds, against the Duke of Queensberry, titular, it was alleged for the defender, That the tenants of the