

No. 146.
valuations,
without addi-
tion on ac-
count of the
circumstances
that the
tenants pay
the cess.

lands paid the land-tax, on account whereof they no doubt had cheaper tacks ; and as the value of the estate was what it could pay, including the tax, which was a burden on the landlord, an addition ought to be made to the rental in consideration thereof.

The Lords Commissioners found the rent paid to be the rule, without any addition on account of the tenants paying the cess.

Act. R. Pringle.

Alt. Clark.

D. Falconer, v. 2. No. 198. p. 264.

* * The following is the same case, by Kilkerran, under different names and date, viz.

1747. July 22. MAXWELL of Middleby *against* The DUKE of QUEENSBERRY.

In a valuation pursued by Middleby of his teinds, parsonage and vicarage, against the Duke of Queensberry, titular of both, the Lords found, That neither poultry paid by the tenant, nor the cess whereof the tenant had no relief, were to be added to the rental.

Kilkerran, No. 7. p. 553.

1748. February 3. OLIPHANT *against* SMITH.

No. 147.
Approbation
of a sub-valuation, in
1643, refused.

The Lords, as Commissioners for Plantation of Kirks, &c. are in use to approve the report of the Sub-commissioners, though the same have not been approved by the High Commission ; as in Philiphaugh's case, No. 145. p. 15746. ; and Lord Monzie's case, (See APPENDIX,) and others there related. But, in a process at Oliphant of Bachilton's instance against Smith of Methven, the titular, for having the report of the Sub-commissioners made in 1643 on the value of the teinds of the lands of Bachilton approved, the Lords sustained the defence, that the Sub-commissioners derived their authority from the High Commission, appointed by the Parliament 1641, in respect that, by the 15th act of the Parliament 1661, rescinding the acts of Parliament 1641, there is no *salvo* of the sentences of the High Commission, which there is by the 9th act of said Parliament, which rescinds the acts of Parliament 1649 and 1650 ; and although there be in said act 15th of Parliament 1661 a general *salvo* of private rights, yet the Lords understood that only of completed rights or final decrees, et nil censetur actum quamdiu aliquid superest agendum ; and they thought they had already gone far enough with respect to the reports of Sub-commissioners.

Kilkerran, No. 8. p. 553.

* * D. Falconer reports this case :

No. 147.

1748. July 13. — David Oliphant of Bachilton pursued a valuation of his teinds against David Smith of Methven, and Katharine Cochran, his mother, the titulars, and insisted to have a report of the Sub-commissioners of the Presbytery of Perth made 1643 approved of and found to be the value, as the Lords had frequently done in similar cases.

Answered: The acts of Parliament 1641, by which this Commission was appointed, were rescinded by act 15. Parl. 1661, without exception of the decrees of the Commission; although, by the 9th act of the same Parliament, annulling the Parliaments held after 1648, these were excepted, but, even with regard to them, the exception can only reach to cases finally determined, not to sustaining the interim steps taken by the Sub-commissioners, which never were approved of by the High Commission.

The Lords Commissioners found, That the report could not now be approved of.

Act. Ferguson.

Alt. R. Craigie.

D. Falconer, v. 1. No. 273. p. 367.

1752. July 15.

MR. FRANCIS ADAM against The HERITORS of CUSHNEY.

No. 148.
Deductions from the rental in a modification or augmentation.

In the augmentation, modification, and locality, pursued by Mr. Francis Adam, Minister of Cushney, the following questions occurred in settling the rental: *1mo*, Whether poultry, which are valued in the tenants' tacks, ought to make part of the rental? *2do*, Whether services valued in the tacks, when not exacted, should make part of the rental? *3tio*, Whether multures, payable to the master, by the tacks, were to make part of the rental?

With respect to the poultry, some of the Lords were of opinion, that the poultry should make part of the rental; that it may be true, that, in a sale of teinds, they are commonly deducted from the rental, for the encouragement of the purchaser, which is rather an indulgence than law; and that no such deduction ought to be in a modification, heritors often increasing their poultry, in that very view, to keep their rental low, in a question with the Minister.

But it was the more general opinion, that where poultry were *bona fide* put into tacks, they ought to be deducted no less in a modification than in a sale; and accordingly the deduction was allowed in the valuation at the instance of Harries of Mable against the Duke of Queensberry. At the same time, should it appear that an unusual number of poultry were thrown into a tack, which might shew an intention *fraudem facere*, the deduction ought to be only allowed of what might appear to be a reasonable number in common usage.