

No. 68. 1754, March 1. ABERCROMBY *against* DUFF, &c.

COLONEL ABERCROMBY complained of Lord Braco's two sons and Mr Innes being enrolled, on sundry grounds, *inter alia* that the lands conveyed by Lord Braco to Mr Alexander Duff and Mr Innes were conveyed without mentioning the teinds, and in these terms they had got their charters, though to his eldest son he had conveyed part of the same tenement both lands and teinds; that in dividing the valuations the Commissioners had divided by the real rent of the lands and not deducted the teinds of his lands, nor deducted from their valuation a proportion corresponding to the teinds, which deduction would have reduced them within their L.400; and though he afterwards conveyed the teinds on which they got a new charter, yet they were not thereon year and day infeft. Answered, It was only by oversight that the teinds were omitted; but it would have made no difference though he had never conveyed them; that there are no teinds in Banffshire separately valued; and if Lord Braco had had no right himself to the teinds, if they had belonged to another titular or patron, or been allocated to the minister, the valuation must have been the same; and in that case Lord Braco's not disposing the teinds would have made no objection; that in some few instances, and in a few counties, there is a separate valuation originally of the stock and teind, and in these cases the valuation must continue separate till at least they come into one person, but generally in most of the lands in Scotland there is no separate valuation of the teind from the stock, whoever has right to the teinds; but the lands are valued in proportion to the real rent, and the heritor of the lands is liable for the whole Cess, and if he obtains a decret of sale of his teinds against the titular or patron, it makes no addition to his valuation, nor diminution of the titular's, nor when the minister's stipend is augmented; and had it been otherwise the act 1690 would have made a great alteration in all the counties in Scotland, and greatly encreased all the patrons valuations without diminishing the heritors, since their stock remained the same, which would have been impossible, because the total valuation of the county could not be altered without authority of Parliament; and in the same way every sale of tythes by this would alter the valuations both of buyer and seller, and every augmentation of stipend would lessen the valuation of the heritors, which could not either be without losing a part of the supply, or a revaluation of the county. The Lords repelled the objection, *renit.* President, Justice-Clerk, Shewalton, Woodhall, *et* Auchinleck.

No. 69. 1754, March 2. STEWART and HAMILTON *against* MAXWELL.

SIR ARCHIBALD STEWART of Castlemilk and Hamilton of Aikenhead complained of admitting Sir John Maxwell of Pollock on the roll in right of the superiorities of several parcels of lands, *inter alia* on these two grounds: The lands of Meikle Govan belonged to a great many small feuars, and he had right to the superiority of one of them. In 1726 these feuars entered into a contract dividing their valuations according to their real rent expressed in the contract, and they were accordingly so entered by the clerk in the Cess books. At a general meeting in 1748 it was represented to a general meeting of Commissioners that they had no authentic valuation if it was not one in 1722; that the clerk had made out a valuation book as exact as he could; therefore the meeting