ter, yet they are not year and day infeft upon it. Answered, That it was *per incuriam* that the teinds were omitted in the first disposition, but it would be no objection though they were not at all disposed; that in Banffshire and most of the shires in Scotland no teinds are valued, and it makes no difference in the valuation who has right to the teinds, whether the heritor of the stock, the minister, the patron, or other titular; the valuation is still in proportion to the real rent, and the heritor of the stock is liable for it; otherwise the act 1690 giving the teinds to the patron would have made a great revolution in all the valuations, in all the shires in Scotland, and yet it made none of the patron's valuations, and the heritors' valuations remained the same. When a stipend is augmented, it makes no change in the valuation of the heritors, not even when one heritor's teinds are exhausted being free teind, and the titular's and other heritors not touched, because they have heritable rights; and when an heritor recovers a decreet of sale of his tithes against the patron or other titular, no alteration ensues in the valuation of either buyer or seller, which yet there must, if the complainer's objection were good. The Court repelled the objection, 1st March 1754.—*Renitent.* President, Justice Clerk, Shewalton, Woodhall, and Auchinleck. No. 68.

1754. *March* 2. STEWART and HAMILTON *against* MAXWELL.

No. 69.

SIR ARCHIBALD STEWART of Castlemilk, and Hamilton of Aikenhead, having complained of enrolling Sir John Maxwell on a right of property and superiority of several small parcels of land, of one of which parcels (the superiority of one of the feuars of Meikle Govan,) the valuation had not been lawfully divided from the other lands valued *in cumulo* with it. The case was, that there being many small feuars of Meikle Govan, they entered into a voluntary contract in 1726 for dividing the valuation of their lands and Cess in proportion to their real rent, and the contract contains the real rent and proportional valuation of each feuar, and that valuation the Collector entered in his books. In 1748 on a representation to a general meeting of the Commissioners that there was no authentic valuation of that county, and that the clerk had prepared one as exact as he could, a Committee was appointed for examining that book, who after several meetings made their report that the book was right except as to one amendment, and the general meeting approved of that book; and as the division was made when there could be no suspicion of any sinister view or design, and had the sanction of a general meeting, we repelled the objection. The 2*d*

No. 69. objection was, that the late Sir John Maxwell, who acquired this superiority in his son's name, had granted an obligement or letter, that his son should re-dispone that superiority, which he referred to oath. Sir John deponed that he did not hear of any such letter till after he had lodged his claim, and after hearing of it, that he sent a friend to enquire about it, and the gentleman to whom it was written sent him the letter by that friend to dispose of it as he pleased, and that before the enrolment. The complainers therefore objected that Sir John had no title when he entered his claim. The Court also repelled this objection, and dismissed the complaint, but several doubted of this last.—The President thought, that the objection would not have been good though the letter had not been returned, for that he heard the letter was only to re-dispone after ten years, and that a temporary right, though no proper wadset, was a good title to vote, and that the act 12th Annæ made no alteration in our law, only introduced a new mean of proof.

See NOTES.