

N.B.—I expressed my doubts of this judgment. I thought the measure a good one, but I did not see the authority for it in the statute. I could not approve of a liberal interpretation in a case which certainly had escaped the observation of the framers of the statute. I thought that the impossibility of exacting from the English debtor what the statute required, was evidence that the statute respected not such debtor.

1772. August 1. SIR LUDOVIC GRANT and OTHERS, *against* EARL of FIFE and OTHERS.

MEMBER OF PARLIAMENT.

Reduction of a decree of valuation.

[*Faculty Collection*, VI. 65 ; *Dictionary*, 8656.]

AUCHINLECK. Ground is not surely the worse for being turned into a garden. Two men swear to what two other men swore. I like not this proof by progress. It is impossible, without further proof, to determine what the witnesses mean.

COALSTON. As to the question, How far the rents of gardens are to be taken *in computo*—the words of the statute are very extensive; all profits of lands were to be valued. Casual rents must be valued: a garden produces a casual rent.

PITFOUR. Whenever we have the original valuation, that must be the rule. In a question upon the old extent, a mill was found not to be comprehended, because it was proved that mills were not extended. If the garden was originally deducted from the valuation, it should not come *in computo* now.

ALEMORE. A garden of any considerable extent is to be reckoned as a subject having a constant value. A small garden may perhaps have been passed over unobserved by the valuers.

PRESIDENT. The great difficulty of all is, that the valuation on which the last valuers founded, was not upon oath: it bears in its bosom to have been nothing more than a declaration. Two men *swearing* to what two other men declared, can never be evidence.

On the 1st August, (or 31st July,) 1772, “The Lords reduced the division of the valuation;” and, 11th August 1772, adhered.

Act. A. Lockhart, &c. *Alt.* Hay Campbell, &c.
Reporter, Stonefield.

N.B.—The decret was reduced on the grounds suggested by the President, which had escaped the observation of the pursuer’s lawyers. The question as to gardens was not determined.