large barony may have occasion to dispone away a part of it, and may restrict his claim to the residue. The freeholders ought not to take into consideration the consequences of this. All that they ought to have done was to record the fact. Instead of this, they ordered Shawfield to stand on the roll for his part reserved. I cannot imagine that the freeholders can be excluded from objecting, for that the legal notice was not given.

MONBODDO. If the restriction was to be considered as an enrolment, I should be of Lord Alemore's opinion.

On the 9th August 1774, "in respect that the restriction was inept, the Lords found no necessity to determine on the complaint, reserving to parties to object on change of circumstances."

*Act.* A. Lockhart. *Alt.* R. M'Queen.

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1774. *August* 10. WILLIAM BOYD ESQ. *against* GENERAL JAMES ABERCROMBIE.

## MEMBER OF PARLIAMENT.

**An objection to a decree of division, that no notice was taken of a grassum paid at the commencement of a tack, was repelled.**

[*Faculty Collection, VI.* 358; *Dictionary*, 8669.]

HAILES. I have a difficulty as to the grassums having been omitted in dividing the valuation. Had the objection been repelled in the *Forfar* case, I would have repelled it here. But in the *Forfar* case the grassum had been paid, not for a subsisting tack, but for a tack which expired before the date of the division. The case here is of a nineteen years' lease, at a rent of L.32, with a grassum of L.100 paid down. This, in calculation, may be equal to L.10 *per annum* for nineteen years; so that, if a correspondent rent had been paid instead of a grassum, the rent would have been L.42 not L.32. This makes a very wide difference.

COALSTON. Divisions of valuation must be proportioned according to the rent of the lands. If the grassum were small, and the rent large, I would not consider the grassum. In a valuation of teinds, a grassum, if large, would go into the account.

PRESIDENT. In all the counties that I know, grassums are not brought *in computo*. As to the valuation of teinds, the case does not apply. If, in the Teind Court, a grassum is brought into the account, on the other hand a deduction is allowed for improvement. Besides, the decision of the Commissioners is good *ex facie* of the proof.

JUSTICE-CLERK. In the case of *Forfar* the grassums were not paid for the tacks of a short continuance, but for the hope of remaining as tenants for a longer space. According to the objection now made, no valuation in the kingdom could stand. This not the rule in first valuation.

AUCHINLECK. The intention of valuation was, that every man should pay

according to the value of his estate. This is laid down in the Act of Convention in Charles II.'s reign. If there are two estates paying L.20 each for a tack of nineteen years, and the one pays a grassum of L.100, and the other none, can we say that the estates are equal? I think not: the one is an estate of L.20, the other L.30. If the grassum is inconsiderable, the rule applies, *De minimis non curat prætor.* It is true that, in sales, grassums are not brought in, nor flying customs, as they are called; the reason is, that that estimation is no more than a rough *vidimus.* As also, in sales, the rate at which the lands may sell is generally undervalued.

ELLIOCK. The grassum is no rent: it is a consideration for receiving one tenant rather than another. Perhaps, at the end of the 19 years, the grassum may not be renewed: if so, the cess will be paid for a subject that does not exist.

ALVA. The cess-roll is a standard thing, and must not be varied by circumstances: we are to judge like the English gentleman who said, whenever he gave away a shilling, he considered that he gave away the interest of a shilling for ever.

KAIMES. A grassum may be said to enter into the value of the subject; but there is a necessity that some general rule should be followed.

On the 10th August 1774, "The Lords repelled the objection that the grassum was not valued."

*Act.* D. Rae. *Alt.* H. Dundas.

*Diss.* Monboddo, Auchinleck, Coalston, Hailes.

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1774. *November* 15. JAMES BUCHANAN, Dean of Guild of Glasgow, *against* PATRICK BELL.

JURISDICTION—PUBLIC POLICE.

**Whether the Dean of Guild has power to make general regulations for removing what, though not strictly a nuisance, may be deemed a deformity, and prove incommodious to the inhabitants and the public in general.**

[*Faculty Collection, VI. p.* 360; *Dictionary,* 13,178.]

AUCHINLECK. The plea of prescription now appears to have no foundation in fact: but, at any rate, prescription can have no place here. If the *water-barge* is a nuisance, no length of time can sanctify it. The good people in Edinburgh were wont, for ages, to throw all their filth out of the windows; but that gave them no right to persist in such an abominable custom.

KENNET. Said that, while on the circuit, he had inspected the *water-barge;* that it was not necessary to the owner, and was a great deformity.

GARDENSTON. The Dean of Guild has a discretionary power to remove deformities.

COALSTON. By the law of this country, the Dean of Guild cannot take away the right of any person, but he has a discretionary power of regulating