

1777. June 25. MR THOMAS MUTTER *against* HERITORS OF THE BURROUGH ACRES OF DUMFRIES.

## TEINDS.

The rule for valuing teinds when the titular has been accustomed to draw the *ipsa corpora*, or teind sheaves of burgh acres.

[*Fac. Coll.*, VII. 430; *Dict.*, *App. I.*, *Teinds*, No. 2.]

BRAXFIELD. When teinds are valued separately, it is a heavier sort of valuation than when jointly, and therefore an *ease* is given. The heritors however choose to adopt that rule, because they see that the proof will not come out clear. But this will not do when the extent of the drawn teind cannot be ascertained. There is no such thing as *averaging* in a case like this. What the Ordinary has done here, was also done in the case of *Lauder*.

COVINGTON. The same thing was done in the case of *Sir Robert Gordon*.

JUSTICE-CLERK. So also in the case of *Dalkeith*. The method proposed by the heritors is inextricable.

AUCHINLECK. The plan of the heritors is to make themselves considered as *socii*; which is impossible.

On the 25th June 1777, "The Lords repelled the general objection;" adhering to Lord Gardenston's interlocutor, and found expenses due.

*Act.* Ilay Campbell. *Alt.* A. Crosbie.

1773. July 3. AGNES YOUNG *against* AGNES, MARGARET, and ELIZABETH SCOT.

## DEATHBED.

Found sufficient that separate acts of convalescence should be proved, each by one witness.

[*Supp. V.* 423.]

JUSTICE-CLERK. The question is, Whether can reconvalescence, by going to market, be held as proved, when one witness swears he saw the party on one market day in the market, and another that he also saw him on another day, and when there are not two concurring witnesses to any one act of appearing in market?" In a case like this there is no cross-questioning of witnesses, and so great room left for mistake, or something worse. Each is a single evidence to a single fact, and this I understand not to be sufficient.

BRAXFIELD. I cannot agree to this doctrine. Here it is of no consequence whether the man was in the market on the one day or the other: we must either hold the evidence good or hold the witnesses to be perjured.