No. 2.

But in the first place, the proof even of the cumulo drawn teind is imperfect, no exact account having been kept.

2dly, Though it were competent, it would be a very improper rule, because one man's lands may be different from another's. Such mode would be different from any of the two, which are pointed out in the decree arbitral; for it is neither the fifth of the rent, nor the just avail of the teinds of each man's lands, but an imaginary value, arising from the operation of throwing a great many men's lands together, as if they were one estate, then valuing them, and subdividing that value; whereby one heritor may be obliged to pay more teind than he ought to do, and another less.

3dly, This is not all; for it will be observed, that the cumulo which the defenders are pleased to assume, is not composed of the teinds of the whole lands, but only of the teinds of about a third part of them, laying the rest altogether out of the question, as if they were not teindable; for as it has already been explained, that two thirds, or more, of the lands, have of late been generally in grass, so the drawn teind arises only from the remaining third which happens to be in crop; and although the precise same acre is not always in grass, or always in corn, yet in the cumulo way, it comes to be the same thing, if such has been the proportion between the grass and corn for a good many years past, which is clearly established by the proof.

It is impossible the Court can go into this; nor will an instance of it be found in the records. There is neither law nor justice to authorise it, being contrary to the known legal rules, and leading evidently to inequality, and injustice.

The Lords found, that the rule of valuing the teinds of those lands, in the natural possession of the heritors, must be a fifth part of the rental of their respective lands: Found, that where any of the defenders' lands libelled, are possessed by tenants, and the stock thereof only ascertained, the fourth of the stock must be taken as the teind of those lands: Found the defenders liable in the expenses of this process; and ordained the pursuer to give in an account thereof; and remitted to the Lord Ordinary, to prepare a state of the teinds of the respective defenders' lands libelled, and to report.

Lord Ordinary, *Gardenston.* For the Minister, *Ilay Campbell.*
For the Heritors, *A. Crosbie.*

W. Wallace.

1777. *July* 9.

PATRICK RIGG of Downfield, *against* The OFFICERS of STATE.

No. 3.
Although a proprietor had paid a high price

THE Court had valued the rent, stock, and teind of the lands of Downfield, &c. belonging to Mr. Rigg, in the parish of Kettle, at £100 Sterling, and the fifth part thereof was declared to be teind, &c.

No. 3.
for a lease long current at a low rent, the valuation was notwithstanding taken at the real value, not at the rent.

Mr. Rigg presented a reclaiming petition against this interlocutor, setting furth that the late Dr. Rigg his father, had let these lands to William Hunter for 38 years, from Whitsunday 1758, at the rent of £67. 19*s*. 1*d*.;—that at a judicial sale of William Hunter's subjects, he had purchased this tack at £200 Sterling, and had since let the lands at £100 of yearly rent; but as this rent was no more than an equivalent for the money paid, for the purchase of the lease, and as Hunter's tack did not expire till 1796, it is in every respect the current lease; and if it had been purchased by any third party, there can be no doubt that it must have been the rule for fixing the teind;—and that it is certainly the same to the titular, whether that tack was purchased by the proprietor, or by a third party.

Answered, That when a landlord purchases a lease from his tenant, it is to all intents and purposes extinguished and discharged. No person can at the same time be both master and tenant. Mr. Rigg had not even attempted this; as instead of assigning the former tack, he had let the land as proprietor, to new tenants, for different rents, and for different periods of years. Supposing that Mr. Rigg, after having purchased Hunter's tack, had let these lands for a lower rent, and was insisting in a valuation according to the new rent, the Crown would never be entitled to plead that the old lease is still unexpired, that it is still the current lease, and that the proprietor is but in fact his own tenant.

The Court having advised the petition with answers, adhered to their former interlocutor, valuing the lands at their present value.

Act. *R. Blair.* Alt. *J. Swinton.*

D. C.

1777. *July* 9.

GOODLET CAMPBELL of Auchloyn, and other Heritors of the parish of Balquhidder, *against* THE EARL OF MORAY.

No. 4.
What is sufficient right to teinds?—Will a personal right prevent teinds being allocated as free teind?

See No. 81. p. 15694.

IN the process of augmentation, modification, and locality of the parish of Balquhidder, Mr. Campbell and other Heritors having been infeft in their teinds, contended that the augmentation must be allocated upon the Earl of Moray's teinds as *free teind*, since his Lordship had at most only produced a personal right to these teinds. In particular, with regard to a part of Lord Moray's lands called Wester Inverlochlarig, it was pleaded by the heritors, that when the Duke of Athole, the titular of the parish, feued out that land to Lord Moray's author, no mention whatever was made of the teinds; and although there is no reservation of them, yet teinds, being always considered as a separate tenement from lands, they could not be carried by a disposition of the property,