the pursuers nor the defender can resort thereto: Finds, that the proof brought by the defender of the extent of the teinds which he was in use to draw, is not legal evidence in a process of valuation of teinds, in which the proof ought to arise from probation of what the lands do or may pay: Finds the proof adduced on the part of the pursuers is likewise unsatisfying, not only in respect it is by burgesses of Lauder, *qui fovent consimilem causam*, but also, that it is confined to the stock, distinct from the teind, whereas it should have extended to both: Therefore, finds a new proof will be necessary; and, in order thereto, appoints both parties to give into process a condescendence of proper persons for putting a value upon the lands, and consequently upon the teinds in question." No. 158.

Against this interlocutor both parties represented; and the Lord Ordinary pronounced the following interlocutor: "Having considered, in particular, that, according to the Earl's account of the method observed in drawing the teinds, and disposal of them, no proof is, or can be brought, of what was the yearly amount of each particular burgess's teind, drawn; and, consequently, as the decree before the sub-commissioners has been deserted for time out of mind, the only method by which the teind can be now ascertained is, by adducing witnesses of skill and knowledge, not connected with any of the parties, who will swear what the lands do, or may pay yearly; and, therefore, adheres to the former interlocutor."

Upon a reclaiming petition for the defender, and answers, "the Court adhered to the Lord Ordinary's interlocutor upon both points."

Act. *Macqueen.* Alt. *Solicitor General.* *Teind Clerk.*

Fac. Coll. No. 87. *p.* 221.

1777. *February* 12.

MAGISTRATES of KIRKCUDBRIGHT *against* EARL of SELKIRK.

No. 159.

The titular or patron of the teinds must be made a party to every valuation. See APPENDIX.

Fol. Dic. v. 4. *p.* 358.

1785. *February* 23.

ALEXANDER GORDON *against* The OFFICERS of STATE.

No. 160.
In a valuation of teinds, an allowance given to the landlord on account of his furnishing marl to his tenants.

In an action for valuing the teinds of his estate, Mr. Gordon proved, that he was obliged, without any price, to furnish his tenants with marl for the use of their lands; and that the increase of rent, on account of that stipulation, would be moderately estimated at 20 *per cent*: He therefore claimed a deduction to that extent.

The Lords distinguished this case from those in which an abatement had been refused on account of sea-ware, or other manure purchased by the tenants for

No. 160. meliorating their farm; Feuers of Dalkeith, No. 144. p. 15745. Hay of Lawfield *contra* the Duke of Roxburgh. No. 149. p. 15750. There, it was observed, the advantages of which the tenants had availed themselves, and by means of which they were enabled to pay an advanced rent, were in their nature permanent; whereas, here the source of improvement was temporary and uncertain. The increase of rent, too, did uot arise from an expesne incurred by the tenants, but from the proprietor's obligation to perform certain articles not usually incumbent on him.

The Lords found the pursuer entitled to the deduction craved.

Act. *Corbet.*

C. *Fac. Coll. No.* 204. *p.* 319.

1786. *February* 8.

The EARL of KINTORE, *against* The UNITED COLLEGE of ST. ANDREW'S.

No. 161.
In a valuation, deduction is not allowed of additional rent paid on account of exemption from multures.

In a process of valuation of teinds, brought by the Earl of Kintore against the College of St. Andrew's, he claimed a deduction from his rental of a part of the rent, as being paid by the tenants in consideration of his relieving them from a multure of the sixteenth peck; the knaveship only, which was the thirty-third peck, being exacted for the labour of grinding; for that the additional land-rent was merely a substitute for the mill-rent, which was not a teindable subject.

The Court, after advising memorials on the cause, allowed the deduction. But that judgment being brought under review by petition and answers, a hearing in presence was ordered.

Pleaded for the titulars: The chief reason why multures are not a teindable subject, is, that they are the price of personal labour; so that tithes of them would be personal, and not predial; Bankton, B. 2. Tit. 8. § 152.; Erskine, B. 2. Tit. 10. § 32. But it is plain, that this principle applies to such reasonable multures only as are an adequate price for the work performed; and therefore, in strict propriety, the excess should be tithable; or, which is the same thing, the portion of mill-rent corresponding to the excess of multure, should be so, such rent being composed of the multures.

The present mode of claiming exemption is peculiarly dangerous to the titular. A landlord thus, after agreeing with his tenant to receive a large part of his rent in an extravagantly high multure, has nothing more to do, in order to defraud the titular, than, upon having his land-rent replaced as before, to allege, that so great a proportion of it was in lieu of multures. What adds to the injury is, that here an invariable deduction is claimed; whereas that founded on an actual mill-rent is, by its nature, subject to change and diminution. Accordingly a similar claim of deduction was rejected by the Court, in the case of Sinclair of Mey *contra* Sinclair of Freswick, 14th January 1784. (See APPENDIX.)

Answered: The argument of the defenders amounts to this, That no deduction from a rental ought to be allowed on account of multure, but for knaveship alone;