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.

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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;

a position equally new and erroneous, and which pays no regard, either to the original expense of the mill and its machinery, or to the constant charge of keeping them in repair. It is plain, that as mill-rent, arising from dry multure is as much deducible as any other rent, so it can make no difference whether the mill-rent be paid at once by the miller, or in sundry portions by the tenants, in the manner adopted in this case. No. 161.

This conclusion is verified by an uniform series of decisions; Heritors of Calder *contra* College of Glasgow, 30th July 1735, (See APPENDIX;) Sir John Maxwell *contra* College of Glasgow, 5th December 1744, No. 143. p. 15744; Minister of Cushney *contra* Heritors, 15th July 1752, No. 148. p. 15749; Dalzell of Glenae *contra* Duke of Queensberry, 14th February 1753, (See APPENDIX;) Earl of Aboyne *contra* King's College of Aberdeen, (See APPENDIX;) Lord Monbodo *contra* Officers of State, 24th June 1772, (see APPENDIX;) Straton of Kirkside *contra* Officers of State, 16th February 1774, (see APPENDIX.) The case of Sinclair of Mey was not adjudged upon the general point, but governed by this speciality, That from peculiar circumstances a tack had been granted at a very low rent, and the titular requring, that it should be totally laid aside, or at least that no deduction from the rental should be made, the Court, *ex equitate*, gave sanction to the latter alternative.

The Court altered their former interlocutor, and repelled the claim of deduction.

Act. *Lord Advocate* and *Wight.* Alt. *Blair*, *M'Cormick.*

*S.* *Fac. Coll. No. 259. p. 394.*

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1793. *February* 27.

JOHN SCOTT, and Others, *against* The COLLEGE of GLASGOW.

No. 162.

In a valuation of teinds, where the value of lands in the natural possession of the proprietor has been ascertained in money by the evidence of the witnesses adduced, the titular cannot afterward insist that any part of the teind shall be converted into grain.

*Fac. Coll.*

*** This case is No. 85. p. 15696.

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1793. *February* 27. JOHN GORDON *against* The EARL of FIFE, and Others.

No. 163.

When the teinds are valued in money, an augmentation cannot be modified in grain.

*Fac. Coll.*

*** This case is No. 34. p. 14821. *voce* STIPEND