

No. 124. before the commission for valuation and sale of their teinds, and had procured a warrant to draw them, upon finding caution to make the valued teind-duty forthcoming at the event of the valuation: And therefore, till a decret is therein obtained, no process for the duty formerly in use to be paid, because *non constat* but the same is higher than the valued duty will be.

Answered for the pursuer: There is no commission of teinds now in being, and therefore no valuation can be depending before them. However, the pursuer does not hinder the defenders to draw their own teinds, they paying the accustomed teind-duty; but they must not keep both the teind and teind-duty, without acknowledging him who pays public burdens for the teind, of which, after a valuation and sale, they are bound to relieve him. And since the Earl cannot get a suspension of the cess for the defenders having a warrant to draw their own teinds, why should they have a suspension of the teind-duty out of which the cess should be paid?

The Lords found the defenders liable for the teind-duties in use to be paid for all terms preceding those for which caution is found simply; and for the said teind-duties, for terms subsequent to the finding caution; with this quality, that the Earl, before extracting, find caution to the defender, to refund or allow in the first end of the valued duties, to be decerned by the high commission, whatever superplus the said accustomed teind-duties shall extend to by and attour the valued duties.

*Forbes, p. 107.*

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1730. December 2. BAILLIE against DUKE of DOUGLAS.

No. 135.

In an action of valuation of teind at the heritors' instance against the patron, it was insisted on for the patron, That the heritor having got a considerable grassum for a nine years tack of his lands, the ninth part of that grassum ought to be added to the yearly rent, in order to make out a valuation of the teind; but it was found, That in respect the old rent was kept up, and that grassums were not in use to be paid formerly for tacks of the pursuer's lands, therefore the grassum could not be taken into the calculation in ascertaining the valuation of the teinds.

In the same process the patron likewise insisted, That here the tenants, by their tacks, being taken bound to pay annually the half of the land-tax, this payment ought likewise to be considered as increasing the value of the teind, since the fifth part of the gross rent, without deduction of public burdens, is the rule, by act of Parliament, for valuing tithes. To this it was opposed, That the quantity of land-tax is uncertain, its endurance not absolutely certain, and therefore it has been the practice of the Court not to augment the teind rental on account of the tenants paying the half or the whole of it. The Lords likewise repelled this allegiance.

—See APPENDIX.

*Fal. Dic. v. 2. p. 440.*