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,

No. 4.

unless specially conveyed. Neither do any of the subsequent conveyances ever take notice of these tiends; so that supposing the teinds to have been possessed since the original feu by the family of Athole, no prescription could follow, as there was no title to prescribe.

Answered, That as the estate of Glengarnock was feued out in 1719, by the family of Athole, in five different parcels, to the whole of which, except to Inverlochlarig, one of the parcels in question, were granted rights to their teinds, it must be presumed that it had been a mere omission as to that parcel, particularly as there is no reservation of teinds in the conveyance. That this was the case is evident, from the family of Athole never having made any demand for these teinds, which they appear to have done for other teinds in the parish, which had not been disponed; and the Duke of Athole, as the titular of the parish, has now localled them as teinds heritably disponed; therefore, certainly, in a question with the other heritors, this must be considered as a sufficient title. For although teinds are considered as *separata tenementa* from the lands, yet the decisions of this Court have, according to the intendment of the Legislature, laid hold of the slightest grounds for uniting them; and therefore, although the teinds are not conveyed *per expressum*, it must be presumed, from the circumstances of the case, that it was the disponer's intention to convey both stock and teind; 27th February 1672, Scott against Muirhead, No. 31. p. 15638; 5th July 1748, Dunning against Creditors of Tullibole, observed by Lord Kilkerran, No. 62. p. 15659. And it appears, that both the Earl of Moray and his authors had paid a price for these lands, adequate to the value of both stock and teind.

The Lord Ordinary repelled the objection to the Earl's titles; and upon advising a petition against this interlocutor, with answers, the Court sustained the titles to the teinds, produced for the Earl of Moray.

Lord Ordinary, *Alva*. Act. *M'Leod, Bannatyne*. Alt. *D. Rae*.

D. C.

1799. *December* 4.

SOLICITOR of TITHES, *against* The EARL and COUNTESS of FIFE.

No. 5.
The effect of an inhibition, and dependence of an action of spuilzie of teinds, in preventing tacit relocation, is taken off by subsequent accept-

IN 1736, the Solicitor of Tithes brought a process of spuilzie of teinds against the Earl of Caithness, concluding for the full value of the teinds in time to come, as belonging to the Crown in right of a bishop.

The Earl, at this time, possessed part of his teinds on an expired lease from Exchequer; but an inhibition had been previously used against him.

Defences were returned, *inter alia*, denying the right of the Crown to the teinds in question; but little was done in the action till 1749, when the Earl took a day to depone to the amount of his rental.