

*annuus*, and therefore in case of eviction of the subject, there behoved to be an abatement, but not equal to the eviction, but by the same proportion as the part evicted bore to the whole, for though the eviction should exceed the feu-duty, yet there must still be a feu-duty paid for what remained. The President thought that in ordinary feus there could be no abatement against a singular successor, if as much remained as was sufficient for the feu-duty, and that the feu-duty was not a rent, but a sort of acknowledgment. The feuars are sometimes called heritable tenants. But as to this last I observed, that feu-duties were considered in law as the rents, and instanced the laws allowing the King to feu annexed lands, and ward-vassals and Bishops to feu their lands, without diminution of the rental. And it carried that the miller should have an abatement, but only proportional. Then the miller's procurator insisted, that as to dry multures, he should have abatement of the whole deficiency, as the eviction was there clear and certain, and was all part of the rent. But we thought that dry multures were always paid for some mutual prestation by the miller, such as grinding for knaveship alone without multure. The miller could not pay all the dry multure either of rent or feu-duty; and therefore we gave the same judgment as to the dry multure. 28th June, Adhered; *renit.* Justice-Clerk (in the chair) and Drummore.

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WITNESS.

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No. 1. 1744, Nov. 22. HIS MAJESTY'S ADVOCATE *against* KERR of Crumnock.

See No. 8, *see* WRONGOUS IMPRISONMENT.

No. 2. 1735, Jan. 15. COLONEL ERSKINE *against* BLACKADDER.

THE Lords allowed the witnesses to be examined, though moveable tenants. The Lords remembered several cases where that objection was over-ruled, and therefore would not wait for the answers.

No. 3. 1735, Nov. 18. FRANCIS SCOTT *against* LORD NAPIER.

THE Lords found the Lord Napier not obliged to depone in general, but that the pursuer should give in a particular condescence, 26th June.—18th November, The Lords adhered.

No. 4. 1736, Jan. 2. PROCURATOR-FISCAL OF EDINBURGH *against* CAMPBELL.

THE Lords found the libel proveable by the party's oath; and found that Campbell might bring Stewart as a witness, to prove his exculpation or alleviation.