

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 condescence of proper persons for putting a value upon the lands, and consequently upon the teinds in question."

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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.

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

No. 159.

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

1785. February 23.

ALEXANDER GORDON *against* The OFFICERS OF STATE.

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

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In a valuation of teinds, an allowance given to the landlord on account of his furnishing marl to his tenants.