

withdrawn, and put out of commerce. The clause in question excepts lands and others lying in Scotland: the legislature left people in Scotland to do with their estates and bonds what they pleased; for *that* did not interfere with the principle of the statute. The heritable bond falls under the trust; but my difficulty is as to the trustees named: the right is vested in the whole; how is the title to be made up? *All* have not accepted; how can a jury serve a *part* as heirs of provision?

BRAXFIELD. I have no doubt that *five* may make up a title.

HENDERLAND. I am clear as to the heritable bond. The trustees and administrators may make a title: the conveyance is to twelve trustees; but the powers of the quorum of five are sufficiently extensive, and they may make up titles. As to the money in the funds, the statute of mortmain goes to prevent, *sub modo*, improvident grants in mortmain. There is no mention of the danger that might ensue to the public funds in the statute: had that been meant, it would have been expressed: had nothing been said as to Scotland, I should have thought that the statute did not extend: the subject in the funds is the property of the creditor, and its *situs* is that of the creditors.

On the 14th July 1785, "The Lords repelled the reasons of reduction as to the heritable bond."

*Diss.* Swinton.

"But, as to the funds in England, they superseded till the 1st of January 1786, that the question may be tried in England."

*Act.* ———. *Att.* G. B. Hepburn.

*Reporter,* Henderland.

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1785. July 20. ANTHONY, EARL OF KINTORE, *against* The UNITED COLLEGE of ST ANDREW'S.

#### TEINDS.

In a valuation, deduction is not allowed of additional rent paid on account of exemptions from multures.

[*Fac. Coll. IX. 394; Dict. 15,766.*]

MONBODDO. Twenty years ago multures were paid: now, no rent is paid for the mill at all. The additional rent has come in place of mill-rent.

BRAXFIELD. Where a proprietor has a mill, and a rent is paid for the industry of the miller, the subject is not teindable: but when a tenant pays rent to be free from a mill, *that* is a rent for the lands. A value, however, ought to be put on the obligation on which Lord Kintore has become bound to keep up *the mill-graith*.

ESK GROVE. How can I say that all the rent is payable for the lands, when it appears that part of it is mill-rent.

SWINTON. The tenants are now free from the mill, just as much as if it had never existed; so the rent is for the lands.

JUSTICE-CLERK. In former times, the ideas of heritors were different from what they are now. Heritors often laid on high rents, not on account of the manufacturing of the grain, but by way of rent. The Court has determined that mill-rent should not be teindable. But, if it appear that the proprietor has taken rent instead of multures, why should not *that* rent be considered as the rent of lands?

On the 20th July 1785, "The Lords sustained the deduction."

*Act.* A. Wight. *Alt.* Edw. M'Cormick.

*Diss.* Stonefield, Hailes, Braxfield, Swinton, Justice-Clerk, (in the chair.)

*Non liquet*, Henderland.

[This judgment surprised me, for the very reverse had lately been decided, after full consideration, in the noted case of *Sinclair of Freswick* against *The Family of Sinclair of Mey*.]

*N.B.* This judgment altered 8th February 1786—*Vide* Faculty Collection, and Dictionary, 15,766.

1785. July 21. DUKE of ROXBURGH *against* ROBERT MEIN.

#### THIRLAGE.

The words, "*cum molendinis et multuris*," in the clause of *tenendas* of a vassal's charter, import, *per se*, a discharge of Thirlage.

[*Fac. Coll. IX.* 349; *Dict.* 16,070.]

BRAXFIELD. Supposing the lands to have been originally thirled, the charter 1517 imported a discharge. It makes no difference that, in 1734, that discharge is not repeated; for there was no need of continuing an exception once granted. I should have had a doubt whether paying in-town multures for 40 years would have been sufficient,—but there is no proof of that.

On the 21st July 1785, "The Lords declared immunity, and found expenses due."

For Mein, R. Cullen. *Alt.* R. Dundas.

Concluded cause.