

1795. February 25.

JOHN LESLIE *against* The EARL of KINTORE, and Others.

## No. 165.

When an estate is let to a general lessee at an undervalue, the rent paid by the tenants to him, and not that paid by him to the landlord, is to be taken as the rule in a process of valuation.

Peter Leslie Grant, in 1769, granted to David Orme, writer in Edinburgh, what is called an over-lease, for seventy-six years, of the whole estate of Balquhairn, which he possessed as heir of entail.

John Leslie, now proprietor of that estate in the same character, having brought a valuation of his teinds, contended, that the rent paid by the general lessee must be taken as the value of the lands, and which rent, though now inadequate, he alleged, was a fair and equal one at the date of the lease.

The Earl of Kintore and others, objected, That the lands had been let to Mr. Orme greatly below their value, as the only means Mr. Leslie Grant had of indemnifying him for the large advances he had made, and the general assistance he had given him in asserting his right to the estate: And farther

Pleaded: Before teinds are valued, the titular is entitled to draw them in kind. The valued teind-duty being the substitute for them, it should be ascertained according to the real value of the lands. When they are let directly to the person who is to occupy them, the rent will be presumed to be their real value: But as, on the one hand, it is a fifth of the constant rent "which ilk land pays," which the Legislature has declared payable to the titular, and the landlord is not liable for a rise of rent recently obtained, because it may not be permanent; so, on the other, the titular cannot be affected by the landlord's keeping the rent of the lands below its natural rate, whether by taking grassums, 6th February 1745, Sir John Maxwell against the College of Glasgow, (See APPENDIX;) or by laying a part of the rent on subjects for which teinds are not usually paid; Erskine, B. 2. Tit. 10. § 32.; 8th February 1786, Earl of Kintore, No. 161. p. 15766. Adam against Cushnie, No. 148. p. 15749. For the same reason, as the rent paid by the general lessee, in the present case, is inferior to the real value of the lands, that paid by the tenants to him should be taken as the rule, and this accordingly has been the practice in similar cases.

Answered: The value of lands is to be ascertained by what the landlord actually draws, without regard to the profits which tenants, in consequence of the exertion of skill and industry, may derive from them; 4th July 1794, Ogilvies against the Officers of State; 9th August 1769, Burnet of Kirkhill; 24th January 1770, Hamilton of Wishaw; 28th November 1770, The Earl of March; 24th February 1771, Douglas of Douglas; 5th July 1769, Blair against the Earl of Eglinton. (These not reported—See APPENDIX.) And there seems no difference between the case where the lands are let to a general lessee, and that where they are let to the person who is actually to possess them. Even in the case of common tenants, the rent drawn by the landlord seldom amounts to the full value of the land, and the tenants frequently get a surplus rent on sub-setting their farms.

It would be hard that the pursuer's lands should be valued at a rent of which, from the length of the lease, he never can himself reap the benefit. No. 165.

Upon advising a petition, with answers, replies and duplies, the Lords sustained the objection, reserving to the pursuer to lead a new proof of the yearly value of the lands.

Act. *Burnst.*

Alt. *Wm. Robertson.*

*Fac. Coll. No. 163. p. 374.*

1796. *December 14.*

SIR HUGH MUNRO *against* The OFFICERS of STATE.

Sir Hugh Munro brought a valuation of teinds against the Officers of State. From the proof it appeared, that he allowed his tenants to dig peats out of a moss belonging to him, and that were he to deprive them of that privilege, they would give £.50 less yearly for their farms, for which sum he accordingly claimed a deduction from his rental.

The Lords unanimously repelled the claim.

Act. *Geo. Ferguson.*

Alt. *Balfour.*

R. D.

*Fac. Coll. No. 8. p. 19.*

1797. *February 8.*

The HERITORS of Blairgourie *against* The OFFICERS of STATE, and Others.

The teinds of the parish of Blairgourie were valued by the sub-commissioners in 1630. The Minister of the parish having afterwards brought a process of augmentation, the heritors, without taking notice of their valuations, agreed to pay him a much larger stipend than the amount of their valued teinds; and decree, of consent, was pronounced accordingly in 1650. The stipend thus settled had been paid ever since.

The Minister of the parish having brought another augmentation, the heritors raised an approbation of their sub-valuations, against the Officers of State, for the interest of the Crown, as joint patron of the parish, and against the other patron and the Minister, in which they declared their object to be, not to diminish the stipend formerly paid to the Minister, but to prevent any additional burden from being laid on their teinds.

The defenders objected: That the sub-valuations of the pursuers had been derelinquished, there being no distinction in principle, and none made in the decisions of the Court, between the effect of an excess of payment to the Minister and one to a lay titular, as the conduct of the heritors in both cases is to be ascribed to a conviction that their valuations were so defective that they could not

No. 166.

In a valuation of teinds, the proprietor is not entitled to a deduction from his rental on account of peats allowed by him to his tenants.

No. 167.

Dereliction of a sub-valuation inferred from an excess of payment to the Minister as well as to the titular.