turning their farms into grass could in law make any difference, or could have any influence on the question, how far the locality could retrospect. And whether the titular could have any claim of damages was a separate question. To this some of the Lords argued, if the whole heritors of a parish should turn their lands into grass, the Minister would lose his stipend. But the reply was obvious; that the law had provided an easy remedy to both Minister and titular, by pursuing a valuation; 2dly, that in this case there was abundance of teinds, either drawn or payable out of the other lands in the parish, much more than sufficient to answer the modified stipend. However, the Lords found that the locality ought to draw back to 1737, *renit. tantum* Kames, Murkle, *et me.*

No. 34. 1752, July 22. MINISTER OF CUSHNEY *against* THE HERITORS.

IN a process of modification and locality, as the teinds were of small extent, the Minister made all possible objections against deductions; and, 1st, a large article paid by the tenants to the heritors, in name of multures. We agreed, that as ordinary multures are teind free, should the heritors convert them to dry multures, so as the tenants would pay nothing at the mill but knaveship, &c. that is for the miller's labour, but not for the mill, these dry multures should also be deducted; but if under that pretence a victual rent should be paid, more than the multures could amount to, that should be liable in teind. Therefore before answer we ordained the parties to show what multures would by the custom of the country be paid at the mill out of an estate of that extent, or what rent the millers in the neighbourhood paid for the mill and multures. 2dly, As to poultry, we thought, what are called reek-hens, and are paid out of every cot-house or reek are teind-free, as the houses are; but other custom fowls are liable, agreeably to the words of the act 1633, by which the price is to be rated of all teinds consisting in money, victual, or other bodies of goods; and therefore we considered such a number of reek-hens as we thought suitable to the estate. 3dly, We thought that such services as are usual and *bona fide* paid, ought to be teind-free, though they be converted; and remitted to the Ordinary to enquire whether the converted services here were such as was agreeable to the judgment 23d July 1740, Douglas of Dornock. (No. 14.) 4thly, Found that all other customs but these reek-hens must be considered as rent, and not deducted in valuing the teind. 15th Nov. Adhered.

No. 35. 1753, Feb. 28. EARL OF MORTON, &c. *against* MARQUIS OF TWEDDALE.

EARL OF MORTON and Captain Stewart pursued a process of approbation of a valuation of their teinds led before Sub-Commissioners in 1629, wherein the defence was that the valuation was departed from by a contrary use of payment ever since. Answered: The payments made were of less value than the valuation. We allowed a proof before answer; and the proof came out that the valuation of Morton's lands was six chalders victual, two-thirds bear, and one-third meal, and L.8 for vicarage; and that there was an old rental of two bolls and a half of wheat and four bolls bear, and 18 bolls best black oats, and L.8. 6s. 8d. of money for vicarage, which has constantly been paid ever since;

and the 18 bolls black oats subset to Morton's author from 1703 at 3s. 4d. tack-duty, with power to him to raise inhibitions, pursue spuilzies, &c. This we thought was a total dereliction of the valuation, and therefore assoilzied from the approbation. The pursuer reclaimed, for that the grain paid was truly in money of less value; 2dly, That here there was a rental, and where that is, the valuation is not by proof of the full rent, stock and teind, but the rental bolls are the valuation with deduction of the King's ease. But we thought that the use of payment was a passing from the Sub-Commissioners valuation, and that rental bolls bound neither party longer than they pleased, and therefore were no sufficient objection to a valuation in the usual form; and upon answers refused the petition. But upon the other conclusion of their libel, that at least we should value their teinds, allowed both parties a proof. This second was agreeable to our judgment 20th June 1744, College of Glasgow, (No. 19.)

No. 36. 1753, July 4. BEATTIE, Minister of Marytown *against* HERITORS.

In a process of augmentation the defence was,—a stipend was modified in 1718 of 6 chalders, 13 bolls, 3 firlots victual, and 100 merks, and 40 merks of communion-elements. But the decreet was so recent, and though the victual was much better than 100 merks the chalder, and the heritors offered L.5 the boll, yet because it wanted two bolls and one-fourth of eight chalders or 800 merks, and no cause mentioned in the decreet for going beneath the *minimum*, and it was a decreet of consent, we repelled the defence, and modified seven chalders and a half victual and 250 merks stipend, and L.60 Scots communion-elements.

No. 37. 1753, July 20. SPALDING *against* HERITORS OF KIRKMICHAEL.

SPALDING of Ashintully in 1615 got a charter from Exchequer of his lands and of the patronage of Kirkmichael, a Church which belonged to the Abbey of Dunfermline. In 1677 he got a charter from King Charles (the signature superscribed by him) on his own resignation, containing a *novodamus* of his lands, and the patronage of this Kirk *cum decimis tam rectoriis quam vicariis ejusdem.* Ashintully some years ago sold the patronage to the Duke of Athol, and disponed the bygone teinds to Spalding of Bonny-mill,—who pursues the heritors for the teinds. The defenders objected to his title both of the patronage and of the teinds, that the charter 1615 not superscribed by the King could not give the patronage unless he shewed a prior right, and the charter 1677 was obtained by obreption, and could convey no more than he had right to before; and that the teinds as part of the Abbey of Dunfermline were disponed to Queen Anne (King James VI.'s Queen) and her right ratified in Parliament and now belong to the King as succeeding to her. The pursuer founded his right to the teinds first on the charter 1677, and secondly on the acts 1690 and 1693. The case was reported by Drummore, and we agreed that the charter 1615 gave no right to the patronage, but that the *novodamus* in the charter 1677 gave good right to it. But the Court was divided on the other two points. I thought the clause *cum decimis* was but a clause of stile in a charter of patronage, that the expression might be constructed either giving *patronatum ecclesæ et decimarum ejusdem*, and then it would give no right to the teinds, or giving *patronatum ecclesiæ et decimas ejusdem*, and then it