

produce parsonage nor vicarage tithes. This was decided, 10th June, 1709, Sir Walter Riddel *contra* the Duke of Roxburgh, where a dove-cote and fruit-yard were found not teindable. And, in the case of the Minister of Kirkurd *contra* Lawson, *anno* 1730, the rent of a mansion-house and yard was deducted from the rental. See APPENDIX.

No. 149.

The little inclosure, of about three acres, is fenced by a stone wall; and the expense of inclosing it must either be allowed, or, if not, the rent of it cannot be rated higher than the open ground contiguous, viz. at about 10*s.* *per* acre, so as the remaining rent may be ascribed to the orchard. At any rate, the late increase of the rent must be proportioned between the orchard and that inclosure, reckoning the present rent of the orchard at £7. 13*s.* 5*d.* and of the inclosure at £.5 6*s.* 6*d.*

“ The Lords found, That the fifth part of the rent of the lands of East-Barns payable for stock and teind is to be the rule for liquidating the teind, without any deduction on account of sea-ware; without prejudice to the heritors, if the rentals of the lands shall be diminished by the failure of the sea-ware, to bring an action, as accords; sustained the deduction claimed for the orchard; and found, that the additional rent is to be divided between the same and the little inclosure, in proportion to the former rent they severally paid.”

For the Duke, *Lockhart.*Alt. *And. Pringle, Ferguson.**W. J.**Fac. Coll. No. 18. p. 29.*1758. *January 27.*KING'S COLLEGE of ABERDEEN *against* LORD FALCONER of Halkertoun.

No. 150.

The King's College of Aberdeen having right to the teinds of the parish of Marykirk, had them valued, in 1756, by the Lords Commissioners; and the teinds, on account of the inconvenience of drawing the *ipsa corpora*, being let in tack to the heritors, the College insisted, That these heritors were bound to make their tenants transport the victual-teind to a market-town, at the option of the titulars, at as great a distance as the tenants were bound by tack or custom to transport their victual-rent payable to the heritors; and they argued, That the refusing such carriage by the heritors was done with a view to oblige the College to convert their teind-bolls below the market-price, as they had no opportunity of getting them conveyed to market from the farms. Answered, Were the *ipsa corpora* to be drawn, the titular must be at the sole expense of carrying them off; and there is no reason why the valuation of the teinds should make a difference. The Lords found, That the heritors were not obliged to transport their victual to a market-town.

*Fol. Dic. v. 4. p. 357. Sel. Dec.** * * This case is No. 21. p. 6568. *voce* IMPLIED OBLIGATION.