1769. *December* 13. JAMES WADDEL and ANN RUSSELL *against* The UNIVERSITY of GLASGOW.

TEINDS.

In a process of valuation, deduction was claimed by the heritor for the use of a moss which was part of the lands and was employed by the tenant as manure; and also for furnishing great timber to repair the houses, in terms of an obligation in the tack,—*found*, That no deduction could be claimed on account of the moss, but allowed a deduction for the timber.

IN a process of valuation, at the instance of the pursuers against the University of Glasgow, as titulars of the teinds of the parish of New Monkland, the pursuers claimed deduction:—1*mo*, For the use of a moss, which is part of their lands, and which is employed as manure by the tenant. 2*do*, For furnishing great timber to the tenant's houses.

OBJECTED by the Defenders, to the former claim, that no deduction can be allowed for the use of the moss, which puts the heritor to no expense,—he merely allows the tenants to take the moss for manure, and the tenants pay nothing for it. No deduction is ever allowed for the annual expense of culture, whether by lime, dung, or other manure; *Hay* against *Duke of Roxburgh*, 2*d March* 1757. It would be different if the tenant sold peats and cut off the moss; but even then deduction would be allowed only to the amount of the sales. As to the other deduction, the pursuers are merely bound to furnish these tenants "with great timber to their houses, *when needful*, during the currency of the tack;" and the tenants are bound to uphold the houses, and leave them in good condition. This is no annual burden on the heritor; and the expense which it occasions to him is overbalanced by the kains and services prestable by the tenants, which are not brought into the valuation; *Heritors of Calder* against *College of Glasgow*, 1735.

ANSWERED to the first Objection,—That the deduction should be allowed on the same ground as is admitted to apply where peats are allowed to be sold: that the decision in the case of *Hay* is not applicable; for the sea-ware was an accidental benefit arising from the situation of the land on the shore, and not from tolerance on the part of the heritor allowing the tenant to appropriate part of the land itself for manure. The heritor, in that case, was not bound to furnish the tenants with sea-ware, and got his rent whether they found sea-ware or not. But here the heritor is bound to allow the tenants to lead and burn his moss, which is a part of the land, out of which no teind could be drawn. If that privilege were withdrawn, the rent would be diminished. At any rate, should the deduction be refused, a reservation should be added to the decree, as in the case of *Hay*, that, if the rental should in time be diminished by the failure of the moss, the proprietor may have it in his power to bring an action as accords.

As to the second objection,—It has been proved by the witnesses, that, un-

less the heritor had come under the obligation to furnish the timber, the tenants would not have agreed to give the rent stipulated in their tacks. The decision in the case of *Calder* is therefore against the defenders.

The following opinions were delivered :—

COALSTON. Why not allow a deduction for moss taken to improve the land, as well as for clay made into brick.

JUSTICE-CLERK. When peats are sold, a deduction is made. But I do not see why there should be a deduction for moss laid on the ground, more than for marle.

AUCHINLECK. If the heritor could say that the moss is only a thing which will last a few years, the titular would not be allowed to consider the benefit thence arising as a permanent rent; but, if otherwise, the heritor will not be allowed to consider it as a casual addition. There may be a reservation, in case the moss run out.

PITFOUR. Peats and brick are not teindable subjects. Here there is no separate subject, but only a manure found upon the lands.

PRESIDENT. Of the same opinion. But I am not for any reservation. Teinds must be valued as they are at the time. If the heritor take a bad time for valuing, it is his own fault.

On the 13th December 1769, " The Lords Commissioners found that no deduction must be given on account of the additional value of the lands from the tenants laying on moss on their lands; but found, that there must be a deduction for great timber, which the proprietors are bound to furnish for the tenant's houses.

Act. A. Wight. *Alt.* R. Cullen.

1769. *December* 18. ALEXANDER HILL *against* JAMES YEAMAN and WILLIAM HOG.

SALE—WARRANDICE.

In an action of damages upon the Warranty, for the eviction of an heritable subject,—*when* the eviction is understood to have taken place,—and *at what period* the value of the subject evicted is to be regarded, so as to ascertain the amount of the pursuer's claims?

[*Fac. Coll., V.* 23; *Dictionary*, 16,631.]

MONBODDO. The rule of law is undisputed, that the seller is liable to pay to the purchaser the price as at the eviction. If the delay in the former cause had been owing to the fault of the purchaser, there might be reason for the interlocutor—but the fact is, that it was the seller, not the purchaser, who undertook the defence of the cause. The sequestration decided nothing. The final eviction must be the rule.