not see the docquet; and, if they had, they would have only seen that David Stewart agreed to hold of the lord of erection. [In the course of the debate his difficulties as to prescription were removed.]

KAIMES. A man has a choice of two things: if he choose one thing for *ten* years, he may change his mind on the eleventh. My difficulty is, Whether there is a valid obligation on David Stewart? If he was once vassal of the Duke of Gordon, he could do no act or deed to disappoint the vassalage. But I doubt as to the validity of the docquet. It can only be supported as a relative deed.

GARDENSTON. As to the point of prescription; suppose the vassal had formally agreed to hold of the subject-superior, and had afterwards taken a charter from the crown, and had possessed on that charter for forty years—Would not the plea of prescription be good as to the vassal? We cannot make a distinction between the right of the vassal and the right of the superior.

JUSTICE-CLERK. David Stewart once had a charter, (in 1679,) from the crown. In 1686, he took a null charter from the subject-superior. Will you force him to ascribe his possession to a *null*, when he had a good title? There is no evidence that he possessed upon the *null* title. Besides, he died long before the lapse of the years of prescription; and no feudal title has been made up by his heirs upon the footing of the charter 1686.

AUCHINLECK. I doubt of the power of election, after that the king was once chosen for the superior. If a man desires to be entered vassal, he may take a charter from half-a-dozen superiors, and he may ascribe his possession to whichever charter he pleases.

ALVA. A consent must be such as to infer an abjuration of every other superior.

On the 4th March 1773, "The Lords repelled the reasons of reduction, and adhered to their interlocutor of 17th November 1772."

Act. A. Lockhart. *Alt.* R. M'Queen.

Reporter, Alva.

Diss. Gardenston, Monboddo. *Non liquet*, Kaimes.

N.B. The objection to the docquet had escaped the observation of the lawyers, and was accidentally discovered on the bench by Lord Hailes.

1773. *January* 19. JAMES SCOT *against* JAMES FRASER.

POOR.

Power of heritors sustained to lay on an assessment for maintenance of the poor by the real rent, although formerly levied according to the valued rent, as being an expedient alteration from the particular situation of the parish.

[*Fac. Coll., VI.* 124; *Dictionary*, 10,577.]

AUCHINLECK. If the rule of real rent, adopted by the heritors and kirk-ses-

sion, be not followed, every thing will be set loose. The valued rent cannot be the rule, and much less the old extent.

PRESIDENT. The Acts of Privy Council are later than the statute on which Fraser pleads; they are *in viridi observantia*, and assessments are laid on according to them. Fraser pleads against his own interest as an heritor; for the purpose of the assessment is to relieve the landed interest by laying a tax on houses, which would otherways pay nothing.

On the 19th January 1773, "The Lords decerned against Fraser, adhering to Lord Monboddo's interlocutor.

Act. A. Murray. *Alt.* Henry Erskine.

COALSTON. The imposing taxations according to the real rent is a novelty. It has never been used in the cases of ministers' stipends, reparation of manses, &c. Although we were not tied down by any law, I should doubt of the propriety of introducing *real rent* into taxation. The constant fluctuation of real rent makes this inexpedient. That there are inconveniences in making the valued rent the rule, is not enough to overturn this important part of the constitution.

JUSTICE-CLERK. The Acts of King William's Privy Council are part of our law concerning the poor, and indeed the most valuable part of it. The Acts of Privy Council give a sufficient latitude, by the words, *or otherwise*. Were we legislators, there could be no doubt that the valued rent would be an unconscionable rule, burdensome beyond measure on the landed interest. I think it reasonable that some plan should be adopted in order to prevent inequalities.

PRESIDENT. I doubt of the power of the Court to make such regulation. The parties ought to have recourse to the Sheriff: if any inequality remains from his judgment, the Court will give redress. In the case of *Heriot's Hospital*, the Court would not consent to make regulations for the future. There is a latitude in the proclamations: Valued rent is the rule when it can be followed; but sometimes that rule cannot be followed: thus, for example, the heritor has relief from his tenants for one-half. This must be estimated by real rent, for farms are seldom valued separately. Hence, in effect, in common cases, one-half of the taxation will be levied by the valued rent, the other by the real.

KAIMES. When there is a town and a country parish, Lord Coalston's rule is good; but a country parish may, by the accession of building, become a town parish, and then the rule is bad.

On the 5th March 1773, "The Lords decerned in terms of the libel, adhering to their interlocutor of the 19th January 1773; but, of consent, found no expenses due."

Act. A. Murray. *Alt.* J. M'Laurin, H. Erskine.

Diss. Alva.