

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—WARRANTICE.

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.

JUSTICE-CLERK. I think the eviction must be held as taking place from the first interlocutor of Lord Minto, Ordinary, restricting the adjudication to a security. From the time of that interlocutor, acquiesced in, the purchaser could not expect to continue in possession: the value of the subject must be estimated as at that time.

AUCHINLECK. After that the adjudication had been restricted to a security, it was impossible that the parties should ever suppose that there was a right of property. Suppose that there had been a decret of reduction, without the word *decern*, there could have been no extract. Nevertheless *bona fides* would have ceased.

KAIMES. After the interlocutor restricting to a security, the purchaser had the subject as a security for his debt, and therefore had no concern in the rise of the rents.

Lord Hailes, Ordinary, found "that the pursuer ought not to profit by the casual rise in the value of houses at Dundee, during the unsuccessful litigation which he and the defenders jointly maintained in the former process; that the eviction of the subjects is to be held as taking place at the date of the sequestration, and that the pursuer is entitled to the value thereof as at that period."

On the 18th December 1769, the Lords altered in part, and found eviction as at the date of the interlocutor restricting adjudication.

Act. J. Douglas. Alt. J. M'Laurin.

1769. December 18. HENRY MILLER, Minister of the Gospel at Neilston,
against THOMAS CRAIG.

MANSE.

Found not lawful to assess Tenants for the expense of leading materials to be employed in building a Manse; it being held that the burden of building the Manse lay entirely upon the Heritors, which term does not include Tenants.

THE manse of Neilston having become ruinous, the heritors assessed themselves for the purpose of building a new one; and they also assessed the tenants and possessors of land within the parish to lead the materials for building the manse, in proportion to their respective possessions or valuations. The heritors also appointed a committee of their number, with power to compound with the tenants for the carriages at proper rates. To these proceedings the presbytery interposed their authority. Thomas Craig, a tenant in the parish, being charged to pay a certain sum, as the assessed value of his proportion of the burden laid on the tenants, presented a suspension of the charge, on the ground that the burden of building the manse lay upon the heritors, under which term tenants were never held to be included.

"The Lords suspended the letters, and found expenses due."