

No. 144.

1777. July 24. SIR ROBERT POLLOCK *against* PATON.

Sir Robert Pollock granted a lease of grounds to Paton, which contained an obligation on the tenant to plow only a certain field, and if he should plow more, "you hereby agree to pay me £.100 Scots for each acre, and proportionally for more or less." The tenant having plowed up more than the allowed quantity, the landlord demanded the £.100 Scots of additional rent for every acre so plowed. The Sheriff found, That, in respect the tack did not bear that the £.100 Scots was of yearly rent, therefore it was to be understood simply as a penalty, and was to be restricted to the real damage sustained by the pursuer, of which he allowed a proof; but the Court in an advocation found, That the £.100 must be understood as of additional yearly rent, and decerned accordingly. See APPENDIX.

*Fol. Dic. v. 4. p. 327.*

No. 145.

Clause in a lease, obliging the tenant to give up part of his farm, on receiving an equivalent deduction from the rent, how interpreted?

1788. July 31.

JAMES SHARP *against* JOHN BURT.

It was stipulated in a lease granted by James Sharp of Kincarrochy to John Burt, that the latter should, upon requisition, give up the offices, garden, and three of the parks adjacent to the mansion-house, on receiving an equivalent deduction yearly from the tack-duty, to be fixed by neutral persons mutually chosen."

After an interval of some years, Mr. Sharp availed himself of this stipulation. In the mean time, the value of the farm had considerably increased, partly in consequence of the general augmentation of the rents of land, partly in consequence of certain meliorations performed by the tenant, but chiefly by means of some peculiar circumstances which could not be foreseen by either party.

The question, therefore, occurred, whether the abatement to be given to the tenant was to correspond to the yearly value of the land as it then stood, or whether it was to be proportioned to the rent stipulated in the lease. Mr. Sharp

Pleaded: It was the obvious meaning of the parties, that with regard to three parks contiguous to the mansion-house, the lease-holder should consider himself as a tenant at will, his lease, after requisition by the landlord, being, to this extent, to be equally done away as if it had never existed. And the only reason why a reference was made to neutral persons, for ascertaining the allowance to be given on account of these lands, was, that at the beginning of the lease the separate value of each park had not been precisely fixed. This indeed is implied in the words here used, an equivalent deduction, when contrasted with the rent actually paid, which must be considered as the full yearly value of the whole farm, being the same with a proportional one. If it had been intended to make the landlord merely a subtenant of the grounds which he had a right to possess, in-

stead of framing the agreement in this way, it would have been declared, that on the landlord's taking back any part of the farm, he should pay the full value, as it should be fixed, from year to year, during the lease. Any other interpretation, too, would be productive of this remarkable absurdity, that if the value of the three parks should by any accident exceed the rent of the whole farm, the stipulation would become elusory, as the referees are to have no farther power than to grant an abatement of the rent. No. 145.

Answered: The words *equivalent* and *proportional* are not synonymous, the one denoting something of equal intrinsic value, while the other has a reference to a precise given standard; and no reason can be given why these words should not be here understood in their natural meaning. As the tenant might have been constrained to continue his possession although the farm should fall in its value, it would be unjust to exclude him from the advantages resulting from a contrary event. In another respect too, this stipulation, according to the construction put on it by the landlord, would be equally hurtful to both parties. For, as the three parks which he has a power of resuming are not particularly specified, the farm must thus remain unimproved during the whole period of his possession, unless the tenant chose to give up, without any recompence, the whole advantages of his industry.

Some of the Judges thought, that the claim of the tenant was to be restricted to the increased value of the lands, as arising from the meliorations performed by him. But the majority were of opinion, that both according to the words, and a fair construction of the lease, the tenant ought to receive the full value of the lands which were taken from him.

The Lords therefore affirmed the judgment which had been pronounced by the sheriff-depute of the county, in these words: "Finds, that the tenant is entitled to such a deduction for the parks which he is bound to give up, as is equivalent to the rent at which they would now be let."

Lord Ordinary, <i>Henderland.</i>	Act. <i>Blair.</i>	Alt. <i>Corbet.</i>	Clerk, <i>Home.</i>
C.	<i>Fol. Dic. v. 4. p. 324. Fac. Coll. No. 41. p. 68.</i>		

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1792. May 16. JAMIESON against ———.

The Lords found, That an out-going tenant was entitled to dispose of his straw. An opinion had been given to the same effect, 5th March, 1785, Duke of Roxburgh against Archibald. See APPENDIX. No. 146.

*Fol. Dic. v. 4. p. 328.*