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-