CASES

DECIDED IN THE HOUSE OF LORDS,

ON APPEAL FROM THE

COURTS OF SCOTLAND,

1821.

Sir J. G. SINCLAIR, Bart. Appellant.—*Leach—Cuninghame.* No. 1.
WILLIAM MANSON, Respondent.—*Grant—Jardine.*

Landlord and Tenant—Clause.—Held,—1.—That a clause whereby a tenant was bound to uphold old houses, and leave them in tenantable repair, with a power to build an additional steading, for which he was to receive payment at the expiry of the tack, did not entitle him to pull down the old houses, and insist for the value of a new and separate steading, but only for its value as an *additional* steading; and,—2.—That he was entitled to that value as at the expiry of the tack, and not merely to indemnification of his outlay.

THE farm of Borrowstoun in the county of Caithness was, prior to 1785, possessed under a lease of twelve years, obtained from the appellant's father by John Manson. By this lease, Manson was bound 'to keep, uphold, and maintain the whole houses here-'by set in sufficient tenantable condition during the tack, and to 'leave them so at their removal.' At the expiration of it, there were on the farm a servant's dwelling, a stable, a byre, two barns, with a kiln and an oxen house, appropriated to the principal tenant, besides cot-houses inhabited by subtenants. A new lease was granted in 1785 by the father of the appellant to Manson for 21 years, at a rent of £105, from Whitsunday, by which the tenant and his successors bound themselves to keep, uphold, and maintain 'the whole houses hereby set in sufficient tenantable condi-'tion during this tack, and to leave them so at their removal, 'with this provision and declaration, that the timber on the seve-'ral subtenants' houses shall now be appraised and valued at the 'sight of two neutral men, one to be chosen by each party, and 'the like appraisement and valuation shall be made at the issue

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'of this tack; and that the outgoing tenant shall pay to, or receive 'from the proprietor, or incoming tenant, according to the differ- 'ence of these valuations to be made by neutral men as aforesaid.' It was also 'specially provided and agreed, that in case, during 'the currency of this lease, the said John Manson or his foresaids 'shall build an additional steading on the said lands, or shall en- 'close any part of the grounds hereby set with stone dikes, or 'with hedge and ditch, or make any plantations of trees, at their 'own expense, they shall have allowance of the value of such 'steading, and of the value of such enclosures and plantations of 'trees, at the issue of this tack, from the said Sir John Sinclair 'or his foresaids, according to a valuation to be put thereupon at 'the term of removal by two neutral men as arbiters, one to be 'chosen by each party, whom the parties shall be obliged to name, 'and whose determination shall be final in manner foresaid.'— Soon after the commencement of this lease, John Manson pulled down the old houses, and erected a new steading, (consisting of a large farm-house and extensive offices,) in the building of which he employed part of the materials of the old houses. In the mean while, the appellant, then an infant, succeeded as heir of entail to the estate; and two years thereafter, the respondent, William Manson, acquired right to the lease, on the death of his father John. At the termination of it, he required the appellant, as landlord, to nominate an arbiter, for the purpose of valuing the steading, in terms of the lease; and the appellant having failed to do so, Manson presented a petition to the Sheriff of Caithness-shire, praying him to appoint proper persons to value the houses and fences. Warrant was granted accordingly, and a proof was allowed to the appellant, and taken, as to the extent of the buildings originally on the farm at the date of entry. The inspectors reported that the value of the house and offices amounted to £758 : 5 : 5¾, for payment of which sum Manson raised an action in the Court of Session. This action having been objected to on the plea of lis alibi pendens, an advocation ob contingentiam of the Sheriff Court process was brought and conjoined with it. On advising memorials, and in reference to the pleas of the parties, Lord Succoth, on the 12th of May 1815, found,

'That it appears from the proof adduced before the Sheriff of 'Caithness, that the steading upon the farm of Borrowstoun, be- 'longing to the defender, (the appellant,) was both incomplete 'and in bad repair at the commencement of the lease granted in 'the year 1785 to the pursuer's father; and although the proof 'were not satisfactory, the stipulations in the lease, upon which 'the present question depends, afford real evidence that this was

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'the case: That by an express clause in the said lease it was pro-
'vided, that in case the tenant should build any additional stead-
'ing on the said lands, he should have allowance of the value of
'the said steading at the issue of the tack: That no restriction is
'put upon the tenant by this clause, as to the nature or extent of
'the steading which he might build upon the farm, and that it
'did not impose an obligation on the tenant to communicate the
'plans of the intended buildings to the landlord, or to give him
'formal intimation before commencing them: That the pursuer's
'father did erect a new steading, consisting of a slated dwelling-
'house and farm-offices, which must have taken considerable time
'to erect, and that no complaint was made at the time by the
'landlord that they were too large, and not suitable to the farm,
'nor any objection made until the pursuer came to demand the
'value of the same at the expiry of the lease: That even after
'the cause came into this Court, the objection stated by way of
'defence was, not that they were too large for the farm, but that
'the expense exceeded ten years' rents, (which does not seem to
'be true in point of fact): That although, by a clause in the
'lease, the tenant was bound to keep the whole houses upon the
'farm in sufficient tenantable condition, yet that, according to a
'fair and rational construction of this clause, he was not bound
'to maintain old houses after he had built new ones sufficient for
'the farm; and therefore that the argument in defence, founded
'upon a supposed breach of covenant in this respect on the part
'of the pursuer, is not well founded: That as the interest of the
'money laid out in building the new steading would be at least
'equal to the sum which it would cost the tenant to keep the old
'steading in repair, the defender is not entitled to insist for any
'deduction on account of the pursuer having been saved the ex-
'pense of keeping the old houses in repair: Therefore, as the re-
'ports and valuations, which were made by tradesmen appointed
'by the Sheriff, are not objected to, and appear to have been
'made after a minute examination of the premises, finds the de-
'fender liable in the sum of £758: 5: $5\frac{3}{4}$, being the amount of
'the valuations of the houses, with interest from the expiry of the
'lease, viz. Whitsunday 1806.'—To this interlocutor the Court, on the 14th of November 1816, adhered, and issued an interim decree for £700; and they refused a petition, without answers, on the 12th of December thereafter.*

Against these judgments Sir J. G. Sinclair appealed, 1. Because they proceeded upon a misinterpretation or misconception

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* Not reported.

Feb. 21. 1821. of the real nature of the agreement between the predecessors of the parties contained in the lease. That agreement, he contended, was, that any new buildings which the tenant was to be entitled to demand compensation for from the landlord, were merely such as were necessary or proper additional buildings, over and above the other houses which were to be at all events upheld; whereas the Court of Session, by their judgment, had made a new covenant for the parties, and had found that the tenant was entitled to build an entirely separate and new set of farm-offices, under the name of an additional steading, without reference to the accommodation which was previously on the farm. 2. Because the additional buildings were unsuitable to the farm, seeing that the value of them exceeded the rents of seven years, and no deduction had been allowed on account of the materials of the old houses, or the timber of the subtenants' houses; and, 3. Because the tenant was not entitled to the value of the buildings as at the date of removal, but merely to the sums actually expended by him in the erection of them, the object of the clause being to secure to him indemnity against actual loss. To this it was answered, 1. That as the former houses were ruinous, the true meaning of the clause was that which had been put upon it by the Court of Session, and that it was not necessary, after the new steading had been erected, to expend sums in keeping up the old houses. 2. That, as the farm was now let at £400 per annum, the steading was not unsuitable, and the price did not exceed two years rent; but, at all events, as there was no limitation in the lease as to the amount of the sum to be expended, and as no objection was made when the houses were erecting, the appellant was bound to pay the fair value; and, 3. That the clause in the lease was explicit as to the time at which the additional steading was to be valued, and the amount paid. The House of Lords found, 'That, according to the terms of the lease, the tenant was bound to keep, uphold, and maintain the whole houses set in sufficient tenantable condition during the tack, and to leave them so at his removal, subject to the particular provision respecting the timber on the subtenants' houses, and that the tenant was not authorized by any provision in the lease to pull down the old buildings without rebuilding the same, or substituting other buildings instead thereof; but inasmuch as the tenant was authorized by the terms of the lease to build an additional steading, and has built an entire new steading, and pulled down the old buildings, he is entitled to so much of the value of such new steading as ought to be considered as an additional steading, and not a substitution for the old buildings,—subject, nevertheless, to the particular pro-

'vision in the lease touching the timber on the subtenants' houses. Feb. 21. 1821.
'And the Lords farther find, That, according to the terms of
'the lease, the respondent is entitled to be allowed for so much
'of such new buildings as, consistently with the former finding,
'he is entitled to have an allowance for, according to a valuation
'to be put thereon at the time of removal, and not according to
'the actual expenditure in making such new buildings. And it
'is ordered, That, with these findings, the cause be remitted back
'to the Court of Session in Scotland, to do therein as is just and
'consistent with such findings.'

Appellant's Authority.—Ducat, May 14. 1803, (15264.)

J. CAMPBELL,—J. RICHARDSON,—Solicitors.

(*Ap. Ca. No. 3.*)

Sir HENRY HAY M'DOUGALL, Bart. Appellant.—*Romilly—Leach—Forbes.* No. 2.

Rev. DAVID HOGARTH, Respondent.—*Clerk—Jardine.*

Valuation—Proof.—Held (affirming the judgment of the Court of Teinds) that an old extracted decree of valuation, in which the numerical word fixing the value had been almost entirely worn away, and a hole left, could not afford evidence of the value of the teinds, although it was the opinion of persons of skill that the word must have been either ten or twa.

IN 1814, the Reverend David Hogarth, minister of the parish of Makerston in the county of Roxburgh, raised a process of augmentation and locality, in which, after the Court had held the heritors as confessed upon the rental, and had remitted the cause to Lord Reston, Sir Henry Hay M'Dougall, the proprietor of the whole parish, (with the exception of a small farm,) gave in objections, and produced an extracted decree of valuation of the teinds of Makerston in 1635 by the High Commission, which, he alleged, established that the value of the teinds was fixed at two, or, at all events, at ten chalders. This extracted decree embraced several other lands, and was quite entire in every respect except at the numerical word ascertaining the number of chalders at which the teinds of Makerston were valued. This word, in consequence of the folding of the paper, stood at one of the corners, which was worn away, and a small hole left. So far as related to Makerston, the decree was in these terms: 'Find and declare 'the just worth and yeirlie availl of the lands underwritten, per-

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TEIND COURT.
Lord Reston.