1777. *July* 29. SIR ROBERT POLLOCK *against* THOMAS PATON.

SIR Robert Pollock, having set grounds to a tenant, for one year, tied him up from ploughing more than a certain part of them, under this declaration, that if he (the tenant) transgressed the prohibition, he was to pay £100 Scots for every acre over ploughed. The tenant did transgress, and did plough more than the part permitted: whereupon Sir Robert claimed the £100 Scots *per* acre for the ground over ploughed; and alleged, that this was due, not in the light of a penalty,—otherways, perhaps, it might have been subject to modification, on the footing of restricting conventional to real damage,—but that it was due to him as additional rent, and subject to no modification. At the same time, he owned, that the missive of tack did not expressly call it additional rent, or even rent, but set it forth in the terms above mentioned.

The point was reported by Mr Dalrymple, Lord Probationer. The Lords, 10th July 1777, thought it of great and general consequence. They ordered memorials; and this day, upon advising, they pronounced this interlocutor:—"Advocate the cause, (from the Sheriff of Renfrew, who had found the condition penal, and that therefore the same was to be restricted to real damage,) and find the defender, in terms of the clause in question, liable to the pursuer in £100 Scots *per* acre, and so proportionally for one acre, one rood, and 28 falls of ground over ploughed; but under deduction of a proportional part of the whole rent of the farm effeiring to said ground; which deduction, of consent modify to 20s. sterling *per* acre, and so proportionally; but find no expenses due, and decern."

As to this last point. The agreement with the tenant was inaccurate: it did not say that the £100 Scots *per* acre was additional rent, or even rent.—The Lords held it to be rent, but no additional rent, therefore they gave deduction of a proportion of the general rent.

See, on this point, *Ralfe* against *Peterson*, decided in the House of Lords, 18*th February* 1772.

See Principles of Equity, 3d edit. V. II, p. 54.

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1778. *February* 10. BETHUNE of BALFOUR *against* WILLIAM TRAIL, late Tenant in Inchhaire, and PATRICK JERVIE the present Tenant.

IN a dispute betwixt these parties, Lord Elliock, Ordinary, 19th February 1777, "Found, that the property of the marle in question belonged to the master, and that the tenant had no right to use or dispose of it; but that the master had right to use it."

The marle was shell marle, a bed of which, of no great extent, was discovered after the tack was set: the tack was still to endure for 12 years, and contained no power to dig for marle, "but with liberty to lime or improve the lands, as the tenant should think proper; and, for that end, to win limestones upon any part of the lands where they could most conveniently be had." On