

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

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.