

No. 141. tack was certainly at an end at the time of the purchase; and therefore, if the money was ever due, it was at that period. At that time, the pursuer was assembling all the claims he had to exhaust the price, and yet he made no demand for this £.50; which demonstrates, that he was sensible he had no title to it.

Answered for the pursuer; Johnston of Kelton himself, his heirs, executors, and successors, are bound by this clause in the tack; and it could never transmit against a purchaser, without a special proviso for that purpose. The purchaser, no doubt, enjoys the advantage of the dikes; but then he pays for it, by buying the lands at a dearer rate; as it will be admitted, that lands inclosed will give a greater number of years purchase than those remaining uninclosed; and as the seller gets a higher price on account of such inclosures, he must undoubtedly pay the expense of making them. This is a personal debt of the seller, for which the purchaser never can be liable. The £.50 in question was not payable till the years of the tack were run; and therefore it was impossible for the pursuer to make the demand at the time he was accounting for the price.

“The Lords found the defender liable to the pursuer in the £.50 in question.”

Act. *D. Dalrymple, junior, Miller.* Alt. *Garden.* Reporter, *Strichen.* Clerk, *Kirkpatrick.*

*Fol. Dic. v. 4. p. 326. Fac. Coll. No. 260. p. 482.*

1765. June 25. GEORGE DALZIEL *against* LOCKHART of Cleghorn.

No. 142.

A sum of money being allowed to a tenant for the reparation of houses, it was found, provided the houses were put in a habitable condition, that the tenant was not obliged to account for his disbursements.

George Dalziel and Mr. Lockhart of Cleghorn having agreed about the conditions of a tack of certain lands belonging to the latter, one of which was, that a stipulated sum should be allowed to the lessee for the expenses he might be obliged to throw out in the reparation of the houses upon the farm, a process being afterwards commenced upon the different constructions to be put upon the terms of the tack, it was found unanimously, That the master could not oblige the tenant to produce a particular account of the expenses he had been at, provided he had fulfilled the terms of the tack, in properly repairing them, and putting them in a habitable condition.

Act. *Lockhart.*

Alt. *Dundas & Wight.*

*Fol. Dic. v. 4. p. 327. Fac. Coll. No. 18. p. 31.*

1767. June 27. ANDREW FINNIE *against* WILLIAM MITCHELL.

No. 143.

The Judges were almost unanimous, That dung is none of the articles that may be sold by the tenant for paying his rent; its proper use being to meliorate land. *Ergo*, If not used, it goes with the land to the new tenant.

*Fol. Dic. v. 4. p. 328. Sel. Dec. No. 256. p. 329.*