No 8.

*Answered* for the charger; 1*mo*, Unless factors have power to remove tenants, tenants if they pay their rents may do what they will, and insult the factors at pleasure. And *ita est* that the suspenders are notoriously guilty of cutting and destroying the wood growing upon the lands, which is of more prejudice than all the rent they pay. Therefore the charger thought his duty and trust obliged him to remove them off the ground. 2*do*, Whatever power the Lords factors may have in general, the suspenders having obliged themselves to remove at the term, that obligement should bind them, and the charger ought not to be left exposed to distress at the instance of the persons to whom he *bona fide* set the lands on the faith of that obligement.

The Lords suspended the letters *simpliciter*.

*Fol. Dic. v.* 1. *p.* 288. *Forbes, MS.*

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1764. *November* 14.

The York-Building Company *against* Sir James Carnegie.

No 9.
A factor of the York Buildings Company having pursued a removing against a tenant, it was objected, that he had no proper title, as his factory was conceived only in general terms, authorising him to carry on and defend all suits and processes, but made no mention of actions of removing; and that there was no evidence that the assistants had concurred with the governor in granting the factory, as his subscription only was adhibited to it. The Lords found, that

The York-building Company having set certain lands to Sir James Carnegie for the term of nineteen years, with a clause in the tack, to remove from these lands at the expiration of the lease, without warning, they commenced an action of removing against him in common form. In bar of which, it was *pleaded*, that the Company were destitute of any title to carry on such a process, being no longer proprietors, but divested of the property of the estate by adjudications long expired, and infeftments, one of which of a considerable extent was vested in the person of the defender. That, in the case of a voluntary alienation of lands, there was no doubt that the lessees had a good right to disregard any action of this kind at the instance of the former proprietors, who were now denuded of the property since the granting of the tack. A tenant, who derives his possession, would not be allowed to quarrel the title of his master, so long as the fee of the estate remains; but it has always been reckoned a sufficient defence against a removing at his instance, that he was denuded by a voluntary sale. An adjudication is a legal sale, conducted under the authority of the Court; there is an absolute transfer of the property, though that alienation may be revoked in virtue of the clause of redemption. That, in the present case, there was no possibility, that the property of the estate would revert to the pursuers, as the adjudications were now all expired, and the alienation was become irredeemable.

It was *pleaded* too, That the estate of the Company was under sequestration, and that they had been prohibited from granting leases without the authority of the Court of Session, and that it was a natural consequence of their being deprived of the power of giving tacks that they could not remove tenants.

No 9.
the pursuer had produced no proper authority from the company to remove tenants.

To these defences it was *answered* by the Company; That whatever interest they might have in these lands, the defender was not entitled to quarrel their right of insisting in this action, as his possession flowed directly from them; and that whatever title is requisite in an heritor, when insisting against tenants not deriving right from him; yet it can never be controverted by his own tenants, let his title be never so lame. As to the estate being vested in creditors in consequence of expired adjudications, the fact was denied.

As to the prohibition of letting leases without the authority of the Court of Session, it seemed, with all submission, to be foreign to the present purpose; as tenants may be removed without new leases being granted, and as the subtenants of the defender in this question might be permitted to continue their possessions, which would be attended with infinite advantage to the Company. But the pursuers could not discover how the former prohibition could obstruct their carrying on processes of removing, as such seemed absolutely necessary to pave the way for the Company obtaining the authority of the Court of Session to grant new tacks.

It was also *objected* by the defenders, That the factory and power of attorney granted to Mr Beveridge, who conducted these processes in the Company's name, was not authority sufficient for that purpose. The factory was conceived in too general terms, and empowered him only to carry on and defend all suits or processes which were then depending, or might afterwards be brought; but that there was not one word relating to actions of removing, which ought to have been particularly mentioned. That there was no evidence that the assistants had concurred, along with the governor, in granting this unlimited power, which was absolutely necessary. That their concurrence indeed was mentioned in the factory; but this was only supported by the subscription of the governor; whereas their subscriptions too were indispensably requisite. Neither was the appendage of the seal of the Company of any force, as that in all probability might be the sole act of the governor, as well as the addition of his own name; and that the after production of a new factory, wherein actions of removing are particularly mentioned, could be of no service to them, as this factory laboured under the same informalities with the former.

The Company on the other hand *insisted*, That there was sufficient evidence of every thing being conducted with the greatest solemnity, and the subscription of the governor, with the seal of the Company being appended, was all that could be required.

'THE LORDS repelled the objections to the pursuer's title to carry on the action of removing; but found, that Mr Beveridge had produced no proper authority from the York-Building Company to entitle him to insist on this action; reserving to the pursuers still to grant a proper authority for that purpose.'

Act. *D. Dalrymple*, jun. Alt. *Alex. Lockhart.*

*A. C.* *Fol. Dic. v. 3. p. 200.* *Fac. Col. No 147. p. 349.*