

from Whitsunday 1753: "But with and under this special quality and provision, that, in case of a judicial sale of the lands before the expiration thereof, it shall be in the option of the purchaser to be free of this tack at the expiration of three years from and after his purchase and entry to the lands; which option he shall be obliged to declare by a writing under his hand one full year before the lapse of the said three years, to be intimated under form of instrument," &c. The estate having been purchased by the Lord-Advocate, he made intimation to the tenants to remove, in terms of the above quality. The tenant objected to his title, as not clothed with infeftment. The Court were of opinion that the purchaser, who succeeded to every right, either in the factor or Court, was entitled to remove the tenants without infeftment, just as much as if he himself had set the tacks. The argument was strengthened by the special clause in the tacks above narrated.

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1773. SUMMER. WILLIAM ALEXANDER *against* The TENANTS of DORNOCH.

THE estate of Dornoch having been brought to a judicial sale, in lots, the fishings were bought by William Alexander, merchant in Edinburgh, who, having extracted his decret of sale, and obtained from the factor an assignation to a process of removing, which the factor had raised before the Sheriff against the tenants, insisted in the process. But it being objected that he had not yet completed his titles by infeftment, the Sheriff sustained the objection; and so did Lord Monboddo, 19th February 1771, in a process of advocacion brought by Mr Alexander.

His Lordship, however, on a representation stating the above mentioned decision in the case of Lord-Advocate, pronounced this interlocutor:—"2d July 1771. Having considered this representation, with the answers, and the late decision of the Court in the case of the Lord-Advocate, and that Mr Alexander is insisting in this removing, not only as purchaser, but as assignee by the factor to a process of removing which was depending before the sale, alters the former interlocutor, sustains Mr Alexander's title to insist in this action," &c. He afterwards decerned in the removing, 18th January 1773.

And, upon advising petition and answers, the Lords adhered.

In this case all the tenants, except one, had formerly been removed by the factor, and were again admitted to the possession by the factor; and the one above excepted never had been in possession at all.

In this case also, the Lords were of opinion, that their factor could pursue a removing on the Act of Sederunt 1756, as well as any heritor.

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1766. February 27. CARLYLE, Factor on Kilhead, *against* LOWTHER.

As a factor on a sequestrated estate ought to have all the powers of a proprietor infeft, in order to enable him to manage it to the best advantage,

the Lords found that he had power to remove tenants even possessing upon tacks set by the former proprietor; 11 *New Coll.*, 41. They were of the same opinion, Carlyle, Factor on the Estate of Kilhead, *against* Lowther. In this case it was allowed that the Court could authorise a factor to remove tenants; but it was contended that it required a special power and instruction from the Court,—and did not fall under the expression “usual powers.”

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1777. August . SHINAS *against* FORDYCE.

IN passing a bill of suspension of a decret of removing by the Bailies of Banff at the instance of Shinas, treasurer to the Incorporation of Shoemakers in that Town, against Fordyce, it was pleaded that, *qua* boxmaster, Shinas had no title to pursue a removing. ANSWERED,—He had a verbal order from the incorporation to do it; and a verbal order was sufficient. Further, *cum processu*, he produced a written order. REPLIED,—This last was of no avail: an authority, *ex post facto*, to raise a process of removing, is not sufficient; the authority must be antecedent. Admitted,—but in this case the written authority was only corroborative of the verbal. OBJECTED further,—The defender had got no copy of the summons at citation, which is a form absolutely necessary—he only got what is called a short copy, and which even takes place in the Sheriff-courts, except in causes below thirty shillings value. ANSWERED,—He was cited in common form, as practised in this burgh, and it is believed in most other burghs of Scotland. In burghs even verbal citations are held sufficient; here there was one in writing, which also mentioned the nature of the process, *viz.* that it was a removing. Besides, the cause was called in Court, and the libel given out to see more than forty days preceding the term of Whitsunday, the term of removal. Lord Gardenston refused the bill, 4th July 1777, and the Lords adhered.

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1777. July . EARL of ABERCORN *against* BROWN.

A LIKE objection as to the citation, that there was no copy left but only a short one, which did not even tell the nature of the action, was proponed in a suspension of a removing obtained before the Sheriff of Edinburgh, Earl of Abercorn *against* Brown. But upon an averment as to the practice before that Court, in removings, the objection was repelled. In this case also the *induciae* given were only three days. But it was averred that, in practice, twenty-four hours were sufficient.

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