

The Judge-Ordinary had repelled the defences; but the defender having applied by bill of suspension to the Court of Session, upon advising memorials, 'THE LORDS suspended the letters.'

NO III.

Lord Reporter, *Kennet.* Act. *Salicitor-General Murray, Hay Campbell, Law.*

Adv. *Blair, Hay.* Clerk, *Tait.*

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*Fol. Dic. v. 4. p. 225. Fac. Col. No 101. p. 193.*

1780. December 22.

WILLIAM INNES of Blackhills against POOR JOHN CLERK.

MR INNES set to Clerk, for 19 years, after Whitsunday 1770, certain lands at a stipulated rent. A tack was extended, and Clerk entered into possession; but, having fallen into arrear of rent, Innes, in January 1779, raised a process before the Sheriff, concluding for the arrears of rent, the sum of which was specially mentioned in the summons, which also contained a separate conclusion for removing Clerk from the lands.

Clerk did not appear before the Sheriff. He was held as confessed upon the sum libelled, due as arrears of rent; for which a decret was pronounced and extracted; and Innes afterwards insisted that Clerk should be ordained to find caution for the arrears, which amounted to more than one year's rent, or be decerned to remove from the lands, in terms of the act of sederunt 1756.

The Sheriff ordered Clerk to find caution between and a certain day, which being elapsed, and no caution found, he decerned in the removing, to take place at Whitsunday 1779.

After this, decret was pronounced; but, before Whitsunday 1779, Clerk paid up his arrears, and got a discharge; but Innes having extracted the decret of removing, and set the lands to another tenant, ejected Clerk at Whitsunday 1779.

Clerk brought a reduction of the decret of removing, containing a conclusion for damages, on account of being ejected; insisting, that as he possessed on a tack still current, and that the libel in the Sheriff-court concluding for removing, was laid neither upon the act of sederunt 1756, nor upon the tenant's being in arrear of rent, the action was irregular, and no decret of removing could be pronounced upon it.

THE LORD ORDINARY, before whom the action of reduction came, at first assoilzied Innes, but afterwards pronounced this interlocutor: "13th January 1780. In respect that the libel of removing before the inferior Court was not laid upon the act of sederunt, nor upon the tenant's being in arrear of rent, and that the whole proceedings before the inferior Court were in absence, and that the pursuer was in possession, in virtue of a tack still current, alters the former interlocutor, reduces the decret of removing, finds that the pursuer is entitled

NO III.

A decret of removing had been obtained in absence, without libelling on the act of sederunt, or that the tenant was in arrears. The tenant having afterward paid up all arrears, brought an action of reduction, in which he was successful.

No 112. to enter again to the possession, and remain therein till the expiration of the tack; and ordains parties to be ready to debate against next calling, upon the other conclusions of the libel."

A petition for Innes, against this interlocutor, being advised, with answers, 22d December 1880, "THE LORDS adhered to the interlocutor of the Lord Ordinary reclaimed against, and refused, the desire of the petition."

Act. *Francis Russel.*

Alt. *Lord Maitland.*

Clerk, *Menzies.*

*Fol. Dic. v. 4. p. 224. Fac. Col. No 11. p. 21.*

1793. *February 26.*

The EARL and COUNTESS of MORTON *against* The REPRESENTATIVES of Daniel Murray and Others.

No 113.

A summons of removing on the act of sederunt, libelled that the tenant should be decerned to remove, or find caution for arrears and the rents of five subsequent years, and decree passed accordingly. The obligation of the cautioners in a suspension of this decree was limited to what was decreed for by the Sheriff.

The act was held not to apply to illiquid prestations.

ALEXANDER RODGER, one of the Earl of Morton's tenants, having fallen more than a year's rent in arrear, a process of removing upon the act of sederunt 1756 was brought against him before the Sheriff. The summons, after specifying the sum due as arrears of money-rent, and conversion of kain, concluded that Rodger should be decerned either to remove, or to find caution for payment of the said arrears, and for punctual payment of the rents for five subsequent years.

The Sheriff decerned accordingly.

A bill of suspension was passed, on condition of his "finding caution for his whole arrears, and the rents for the five subsequent years."

Daniel Murray, and others, became his cautioners, and were taken bound, not only for the arrears and rent for the five subsequent years, but also for "whatever sums may be awarded, in name of damages and violent profits, and such other sum, or sums of money, as the said Alexander Rodger shall be found liable in to the chargers, in case it shall be found, by the Lords of Council and Session, after discussing the suspension to be expedite hereupon, that the said Alexander Rodger ought so to do."

The Earl of Morton afterwards brought an action of damages against the cautioners, for the non-performance of certain prestations relating to inclosures, &c. which were stipulated in Rodger's tack. The cautioners

*Pleaded,* In this, as in every other suspension, the caution found must be regulated by the demand of the charger. In the summons before the Sheriff nothing is said about the prestations now claimed.

The act of sederunt, and the interlocutor passing the bill of suspension, require caution only for rent and arrears; expressions which, in technical, as well as common language, relate to the liquid tack-duty, and not to illiquid prestations. The latter are not connected with one year of the tack more than ano-