

THE COURT, at advising a reclaiming petition and answers, were not moved by the first objection; but, upon the others, there was some difference of opinion.

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Tenants, it was *observed*, must have sufficient warning to remove; but frivolous objections must not be laid hold of to injure the interest of the landlord. Whitsunday was, in this case, the proper term of removing; though the tenant was entitled to the ensuing crop, which, in that part of the country, is not separated from the ground till very late in the year. He therefore suffered nothing by the terms of the precept. The summons of removing, if faulty, may be amended.

THE LORDS altered the interlocutor reclaimed against, and found, That the defender must immediately remove.

Lord Ordinary, *Mouboddo.* Act. *Arch. Campbell, junior.* Alt. *Montgomery.* Clerk, *Menzie.*

D.D.

Fol. Dic. v. 4. p. 223. Fac. Col. No 42. p. 86.

1794. December 13.

MR BARON GORDON *against* The REPRESENTATIVES of ROBERT MICHIE.

MR ROBERT MICHIE, minister of the parish of Clunie, at Whitsunday 1750, entered into possession of a farm, on a lease, to last 'during all the time of his incumbency' in that parish.

No 90.
The heirs of a tenant for life may be removed summarily between terms.

Mr Michie remained minister of Clunie, and possessed this farm, till his death, which happened on the 15th June 1794.

Mr Baron Gordon, the landlord, did not dispute the right of his Executors to the crop on the ground, and, as a matter of favour, he allowed the use of the grass for some time after the death of the tenant. Considering himself, however, as legally entitled to immediate possession of the farm, he, after giving the Representatives of the deceased previous notice of his intention, on the 26th September, presented a petition to the Sheriff, praying that they might be ordained immediately to remove from it.

The Sheriff, on the 15th October, ordered them to remove in 14 days.

By this time, the Representatives had paid the rent for crop 1794.

They afterwards presented a bill of advocacy against the judgment of the Sheriff, which, having been refused, they, in a reclaiming petition,

Pleaded; A tenant is entitled to continue in possession after the period stipulated in the lease is completed, until he is regularly warned to remove; and it makes no difference whether continuance of possession is claimed by himself or his heir. A tenant for life has even higher powers than an ordinary lessee, and in so far as there is any difference between the situation of their heirs, the heir of the former is more entitled to favour as in his case the duration of the lease is altogether uncertain, and will generally be put an end to unexpect-

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edly between terms, when his heir has provided no place to remove to, and when the effects of the deceased cannot be disposed of without great disadvantage. It is true, that the heir of a liferenter may be summarily removed; but there is this material distinction between a liferenter, properly so called, and a liferent-tenant, that the one possesses gratuitously, and therefore, upon his death, a renewal of the same right will not be presumed, whereas the other pays an adequate rent for the subject, from which the law presumes, that he draws his whole maintenance, and his right to which it has declared capable of being dissolved only in consequence of a regular warning. The tenants even of a liferenter cannot be removed at his death, without warning, as little could the assignees and subtenants of a liferent-tenant, and there seems the same reason why his heirs should be protected in the possession; Bankt. v. 2. p. 116.; Erskine, B. 2. Tit. 6. § 49.

Besides, the heir is liable for the current year's rent, and consequently is entitled to continue in possession. If it were otherwise, it would frequently be impossible to ascertain the proportion of rent due to the landlord.

Answered; When a lease is descendible to heirs, the representatives of the tenant are entitled to possess till they are regularly warned to remove. The heir has then a lawful title of possession, and tacit relocation takes place. But in a liferent right, the heir, from the nature of the thing, is excluded. It never was supposed, that the heir of a liferenter was entitled to make up feudal titles to the subject; and although service is not necessary with regard to leases, the representative of a tenant for life has, for the same reason, no right to enter into possession. The liferent-infestment or liferent-lease was the only circumstance which excluded the right of the proprietor, and, it being removed, he alone is entitled to assume possession; Craig, Tit. *De migrando*; Stair, b. 2. tit. 9. § 38.; Mackenzie's Obs. on act 1555, c. 39.; 23d February 1760, Tennent against Tennent, No 87. p. 13845.

According to strict principle, perhaps, warning should not be necessary, even against the tenant of a liferenter. Practice has however established its necessity; and as the tenant has a legal title of possession, there is obviously room at least for the distinction.

Farther, as the landlord, in such cases, cannot foresee the termination of the lease, or consequently give warning before the death of the tenant, if warning were afterwards necessary, it would frequently be in the power of the heir, when the lease was beneficial, to exclude the landlord for a year after the death of the tenant, contrary to the express stipulation of the parties, while at the same time, wherever the rent was high, the landlord could not force them to continue in possession.

In the present case, there is no dispute about rent, and in every case of the kind, the proportion due to the landlord may easily be ascertained. Matters must necessarily be settled in this way, whenever the heir does not claim possession.

Upon advising a reclaiming petition, with answers, the Lords, upon the general ground, unanimously "adhered."

No 90.

Lord Ordinary, *Aukerville.* Act. *Honyman.* Alt. *Maconochie.* Clerk, *Pringle.*
D. D. *Fol. Dic. v. 4. p. 223. Fac. Col. No 146. p. 335.*

1796. June 24.

GEORGE STEWART *against* The REPRESENTATIVES of Patrick Grimmond.

IN 1740, Patrick Grimmond entered into possession of the mill and mill-lands of Airtully, on a liferent lease. He died 19th April 1796, and on the 25th of that month, Mr Stewart the landlord presented a petition to the Sheriff of Perthshire, praying, That his Representatives might be removed summarily from the possession.

No 91.
The heirs of a tenant for life may be removed summarily between terms. See No 90. p. 13857.

The Sheriff-substitute pronounced the following interlocutor: "Finds it alleged by the pursuers, and not denied by the defender, that Patrick Grimmond, the liferent tacksman of the farm in question, died upon Tuesday the 19th April last: Finds, That in so far as the grounds were sown at the death of the liferenter, the defenders will be entitled to reap the crop thereof, on paying a proportion of the whole rents effecting thereto; but finds, that they have no right nor title to sow or reap any other part of the farm, nor to use the grass thereon, whether sown or natural; and decerns summary removing against them, with the explanation foresaid; and with this further explanation, that in so far as the defunct has laboured ground not sown at the time of his death, or the defenders since that period have laboured such ground, the pursuer must pay a *bona fide* price for such labour; and further decerns the defender to pay to the pursuers £20 Scots of damages and expenses in case they fail to remove; but supersedes extract till to-morrow at 11 o'clock forenoon"

A bill of advocation, presented by Grimmond's Representatives against this judgment having been refused, they presented a reclaiming petition, containing an argument in law, substantially the same with that which was maintained by Mickie's Representatives, in the question between them and Baron Gordon, No 90. p. 13851.

THE COURT considering it as fixed by that decision, That the Representatives of a liferent lessee may be removed summarily, unanimously "refused the petition," without answers.

Lord Ordinary, *Swinion.* For the Petitioners, *Hagart.* Clerk, *Colquhoun.*
R. D. *Fac. Col. No 225. p. 525.*