

of sale, stated the terms of the lease, which was not objected to by the creditors; an argument much insisted on in the papers.

The Lord Ordinary "repelled the reasons of reduction, and assoilzied the defender."

On advising, however, a reclaiming petition and answers, the Court "sustained the reasons of reduction."

This judgment being brought under review, the Court pronounced this interlocutor: "Alter the interlocutor reclaimed against, repel the reasons of reduction, and assoilzie the defender."

To this judgment the Court afterwards finally adhered, on advising a reclaiming petition, with answers, &c.

Lord Ordinary, *Braxfield.* Act, *Blair, Mat. Ross.* Alt. *Rolland, W. Miller.* Clerk, *Home.*  
S. *Fac. Coll. No. 242. p. 372.*

1799. June 1. JOHN CLERK against CHARLES FARQUHARSON.

In 1795, Dr. Charles Farquharson addressed a missive to James Smith, proprietor of a house, offices, and garden, in the town of Nairn, bearing, that, in terms of a previous agreement, he thereby obliged himself to pay £.10 for the subjects, "as the yearly rent, from Whitsunday, 1795, to Whitsunday, 1796." And, after stipulating that Smith should make certain improvements, for part of which the Doctor obliged himself to pay interest on the money expended, it was added, "Let it be understood, that you are to give me a lease of the place, if required, for the space of seven years from and after the term of my entry, I paying you punctually the agreed-on rent."

Smith, in answer, declared his acceptance of the offer; and Farquharson entered to possession.

In 1798, Smith sold the subjects to John Clerk, who brought an action before the Magistrates of Nairn to have Farquharson removed at Whitsunday 1799.

In defence, he founded on the missive and acceptance as equivalent to a lease for seven years.

The Magistrates allowed a proof that the pursuer was informed of them before his purchase.

This was referred to his oath.

The Magistrates found it negative, and decerned in the removing. Farquharson presented a bill of suspension.

The Lord Ordinary on the Bills, after advising with the Lords, ordered memorials to the Court.

The suspender

Pleaded: A lease of an urban tenement, clothed with possession, is effectual against singular successors; Waddel against Brown, No. 117. p. 10309. *voce PERSONAL AND REAL.*

No. 89.

No. 90.

Missives, by which a tenant obtained a lease of an urban tenement for one year, and an obligation on the landlord to grant a lease for seven years, if required, found ineffectual as a lease for seven years against a singular successor.

No. 90.

From the tenor of the missive, which, from its being executed without the intervention of a man of business, is to be liberally interpreted, it was evidently intended to create a lease for seven years, obligatory on both parties, and that the landlord, when required, should grant a formal deed in terms of it. It is therefore effectual against the charger; Ersk. B. 2. T. 6. § 21.; Garioch against Forbes, No. 24. p. 15177. At any rate, a lease for a term of years may validly be granted, with liberty to renounce it at the end of each year; and the missive here must, in all events, be considered as such.

Answered: When parties enter into missives, obliging themselves to grant a formal lease in terms of them, both parties are bound by them; and, when followed by possession, they are binding on singular successors. But here there was no finished agreement except for one year, at the end of which the tenant might have quitted possession. Upon this finished agreement, he possesses by tacit relocation. He had farther a personal obligation on the landlord, giving an option to obtain a lease for seven years; but as the suspender had not made the requisition before sale, his right to do so is ineffectual against a singular successor; Dalrymple against Hephurn, No. 29. p. 9444. *voce* OBLIGATION.

Upon these grounds the bill of suspension was refused:

Lord Ordinary, *Eskgrove*.

For the Charger, *Ja. Clerk*.

*Akt. Williamson*.

*D. D.*

*Fac. Colk. No. 126. p. 286.*

## SECT. V.

Competition betwixt Tacks, and betwixt Tacks and other Rights.

1570. December 14. HOME *against* TENANTS of OLDHAMSTOCKS.

No. 91.

A tack being let after there was a feu of the same land granted to another party, which feu was not known to the tacksman, it was found, That the tack behoved to stand till it should run out, because of the tacksman *bona fides*.

*Fol. Dic. v. 2. p. 421. Maitland MS.*

\* \* This case is No. 24. p. 4684. *voce* FORFEITURE.