

1791. *June 26.*A. *against* B.

No. 30.

Found, That possession upon a verbal lease for nineteen years was not sufficient to give any endurance beyond a year. See APPENDIX.

Fol. Dic. v. 4. p. 322.

1804. *July 6.*MACARTHUR *against* SIMPSON.

No. 31.

Evan Campbell (23d March, 1795,) addressed the following letter to James Simpson, glover in Inverness:

A missive letter, not altogether formal, sustained as a lease of an urban tenement for two life-rents.

“ SIR,

Inverness, 23d March, 1795.

“ I do hereby bind and oblige myself, my heirs and successors, to continue you and your wife as tenants and possessors of the room and closet, fronting the east street, in the house belonging to me; bounded on the west by the House-larach belonging to Donald Macintosh, late bulk-master in Inverness, and on the east by the house belonging and presently possessed by John Denoon, messenger there, during all the days of your lives, for the yearly rent of £.2 5s. Sterling, payable by equal portions, at the terms of Whitsunday and Martinmas yearly. And I hereby agree, at my own expense, to strike out a door on the gavel fronting the street, any time you may think the same proper; it being hereby understood, that it is optional to either you or your wife to give up your possession of the said room and closet any time you choose. And I declare this letter to be as valid and sufficient to all intents and purposes, as if the same was regularly wrote on stamped paper, and contained all the formalities required by law, any practice to the contrary notwithstanding. And I am, Sir, your most obedient servant,

His
EVAN E. C. CAMPBELL.
Initials.

Wm. Junken, witness.

Donald Mackay, witness.

To James Simpson, glover in Inverness.”

“ N. B.—The above initial letters, signed by Evan Campbell, and above direction adhibit at his sight, and in his presence, place and date first above written, before and in presence of William Junken and Donald Mackay, both residents in Inverness; this letter and address being wrote by the said Donald Mackay.”

In 1801, Campbell sold the property to John Macarthur, wright in Inverness; who, denying that he had any knowledge of the above missive, brought an action of removing against Simpson, before the Sheriff of Inverness, who, “ in respect

No. 31. of the minute of tack produced, and the possession had by the defender in consequence thereof, sustains the defences, assolzie the defender, and decerns; reserving to the pursuer to set aside the minute before the proper Court, as accords."

This judgment was brought, by bill of advocacy, under review; when the Lord Ordinary (7th December, 1803,) repelled the reasons of advocacy, and remitted the cause *simpliciter*.

Macarthur reclaimed, and

Pleaded: Wherever informal missives have been sustained as tacks, the tenant has always much more than the mere insulated fact of possession to urge in his favour. Upon the faith of the writing, prestations have been performed, and acknowledged improvements made and permitted. *Res non sunt integræ*, and the landlord is now barred from objecting to the informality of the document. In the case of the lease of an urban tenement, the tenant has not the benefit of the act 1449, which rendered tacks real, "for the safetie and favour of the puir people that labouris the ground;" and no improvement is here alleged which can take off the informality of the writing, so as to give a right to possess a room and closet in a house for two lives, by a missive signed by initials.

Answered: There can be no reason, from the nature of the subject, why there should be any difference between the lease of an urban and rural tenement. The same favour in support of the stability of property applies to both: and the understanding of the country had long given the act such a liberal interpretation, before the Court was called upon to sanction it, by its being called in question; Waddel against Brown, No. 117. p. 10309. *voce* PERSONAL AND REAL. Possession is the great principle in all cases, where the objection of informality is to be obviated. The existence of a lease does not depend upon any scale of improvements by the tenants, but upon a mutual consent; and where this consent has not been given by a formal writing, the landlord's conduct, and not the tenant's, is to be considered. The permission to enter and possess is the most unequivocal proof of the landlord's consent, which binds him to grant a formal lease, when required to do so.

The Court (6th July, 1804,) adhered.

Lord Ordinary, *Craig*.

Act. *Gordon*.

Agent, *Ja. Robertson, W. S.*

Alt. *Forbes*.

Agent, *Ja. Grant, W. S.*

Clerk, *Walker*.

F.

Fac. Coll. No. 173. p. 391.