

No. 3. ' been entered into, and that without any declarator or process at law what-
' ever; and in respect it is not denied, that the said John Macarthur having
' become bankrupt, did surrender not only his other effects, but the whole
' stocking upon his said farm to a trustee for his creditors, who has according-
' ly disposed thereof for their behoof, and that the said John Macarthur has
' now no stocking of his own upon the said farm; therefore, decerns and de-
' clares in terms of the pursuer's summons of declarator *.'

On advising a reclaiming petition for the defender, with answers, many of the Judges were for adhering to the judgment. The irritancy (it was observed) had been incurred, and the attempt now made, *pendente lite*, to vest both the lease and stocking in the defender's eldest son, was a subterfuge which ought not to be countenanced.

But the Court, by the narrowest majority, and on the grounds stated for the defender, altered the judgment of the Lord Ordinary, and assoilzied the defender.

Lord Ordinary, *Cullen*.
Clerk, *Colquhoun*.

Act. *Arch. Campbell, jun.*

Alt. *H. Erskine, Baird.*

R. D.

Fac. Coll. No. 196. p. 451.

1805. *March 9.*

MACHARG, Petitioner.

No. 4.

Formal warn-
ing is not ne-
cessary from
grass-inclo-
sures let from
year to year.

JAMES MACHARG occupied two parks belonging to the estate of Ardmilland, for several years previous to Martinmas 1803, by written sets, from year to year. Of this date, (13th October 1803), he made a written offer to take the same parks for another year. The offer was accepted, and the parks specially let from Martinmas 1803 to Martinmas 1804.

The parks, at this last date, having been let to another tenant, he, on 3d December 1804, was refused peaceable possession by Macharg, who had just sold off his fat cattle, and put a lean stock on the ground, and defended his conduct, upon the plea, that he had not received any legal warning to remove, and was therefore entitled to the use of the parks for another year, by tacit relocation.

A summary application was presented to the Sheriff of Ayr, (6th December 1804), to ordain his immediate removal.

The Sheriff sustained the defences, (21st December), reserving to the petitioner to bring a proper action of removing.

A bill of advocation was presented. The Lord Ordinary refused the bill, and remitted to the Sheriff to decern in the removing.

The Court refused a petition reclaiming against this judgment, (5th March 1805); but, at the same time, reserved all questions of damage which might arise among the parties.

* The assignation of the lease by the father to his eldest son was not executed till after the date of this interlocutor.

The fields, let to Mackenzie were entirely for pasture, and let from year to year, in which situation, it is universally understood, that the doctrine of tacit relocation does not take effect. Unless the tenant makes a new bargain, he is not entitled to remain a single day after the term is expired; and if he does, he may be summarily removed, because he has now no title of possession whatever.

No. 4.

Lord Ordinary, *Bannatyne*.
Clerk, *Mackenzie*.

For Petitioner, *Boswell*.

Agent, *Geo. Tod*.

F.

Fac. Coll. No. 207. p. 464.

1808. *March 2.*

JAMES CAMPBELL *against* DONALD M'KELLAR, and Others.

No. 5.

By disposition dated 8th August 1806, the Duke of Argyle disposed the lands of Baringlongart, and others, to Lord John Campbell, who was infeft on the 3d and 5th of September following.

In the month of February 1807, Lord John Campbell disposed these lands to James Campbell the pursuer, who was infeft on the 24th March, and whose entry to the lands was declared to commence at Whitsunday thereafter.

The right of the pursuer, therefore, was completed before the period of 40 days preceding the term of Whitsunday.

The lands were possessed by the defenders, from year to year, at a low rent.

The pursuer raised a summons of removing, dated 7th March 1807, which was executed on the 16th and 17th days of the same month, and concluded for removal at the term of Whitsunday 1807 from the pasture, and at the separation of the ensuing crop from the arable ground.

The action was called in Court on the 3d April. Thus the libel was dated and executed before the pursuer had taken infeftment; but before it was called in Court his right had been completed*.

The Sheriff of Argyleshire assoilzied the defenders from the action.

The cause was then brought by advocacy before this Court; and having been discussed before Lord Balmuto, Ordinary, his Lordship advocated the cause, and decerned in the removing; and, upon advising a representation, pronounced the following interlocutor:—"In respect that it appears that the pursuer, in February 1807, obtained a disposition from the Duke of Argyle to the lands occupied by the defenders, his entry to be at Whitsunday fol-

Infeftment prior to the period of 40 days before the term of Whitsunday, and prior to the calling of the summons of removing in Court, but posterior to the date and execution of the summons, sustained as a sufficient title in an action of removing

* Certain communings, relating to the removal of the defenders, occurred between them and the pursuer, which were made the subject of argument in the pleadings, and were thought worthy of notice in the interlocutor of the Lord Ordinary. But these were of a nature altogether incisive, and did not in the slightest degree influence the Court in deciding the question.