whole of them; and, if so, that the defender's predecessor got along with his lands the salmon fishing *ex adverso* of them. It may be impossible now, owing to the lapse of time, to establish this by direct and positive evidence; but that is not necessary, for, according to a well established principle in the law of prescription noticed by Lord Curriehill in *Sinclair's* case, possession, when proved to have existed for time immemorial, is held, independently of direct or positive evidence, to draw back to the earliest title to which it can be ascribed; or, in the words of Lord Young, it is only "reasonable to regard the possession of the defender and his ancestors as a continuance with respect to that part of the lands of the previous possession while the barony was entire."

With these observations, I concur with your Lordships in opinion that the Lord Ordinary's interlocutor ought to be adhered to.

LORD JUSTICE-CLERK—As to the matter of possession, it is very unfortunate that there should have been any misunderstanding on that subject, but my recollection is that I made it quite clear that I thought it a reasonable course for counsel to follow to leave it to the Court to read the proof, and that if we felt difficulty we should ask for further argument, but that if we felt no difficulty we were to advise the case. We proceeded on that footing.

The Court pronounced the following interlocutor:—

> "Refuse the reclaiming note, and adhere to the interlocutor reclaimed against: Find the pursuer liable in additional expenses, and remit to the Auditor to tax the same and to report."

Counsel for Pursuer—Lord Advocate and Ivory. Agent—D. Beith, H. M. Woods, &c.

Counsel for Defender—Dean of Faculty (Clark), Q.C., and Marshall. Agents—Wilson & Dunlop, W.S.

Thursday, October 15.

FIRST DIVISION.

[Lord Gifford, Ordinary.

CRAWFORD *v.* FIELD.

Feu—Superior and Vassal—Access.

A superior gave off certain feus which were described in the feu-charters as bounded by certain streets "with free ish and entry to the said area of ground by all the roads or streets made or to be made by me for the use and accommodation of my feuars." *Held* that he was not entitled, previous to the formation of the said streets, to occupy their solum with temporary erections so as to interfere with the feuar's free right of access.

The question in this case arose between a superior and his vassal, as to the right of the former to occupy with buildings and enclosures the solum of a projected street which formed one of the boundaries of the vassal's feu. In June 1864 the defender Mr Field feued to Thomas Bernard "All and Whole that area of ground containing 27 poles imperial measure, being part of my property of Bowling-green, Leith, bounded as follows:—on the north by the area of ground feued by me to Andrew Morton, ironfounder, and upon which he has built an iron foundry and other buildings; on the west by Bangor Road, on the east by Albert Road, and on the south by Burlington Street, and including the wall built upon the said area of ground, and forming the south boundary thereof, for which wall my said disponee has paid the sum of £33, 15s. as the value of the same, which has been fixed and ascertained by John Masterton, surveyor in Edinburgh, and Thomas Anderson, builder, Leith, two valuators mutually chosen by me and my said disponee, conform to their report, dated 26th May 1864; with free ish and entry to the said area of ground by all the roads or streets made or to be made by me for the use and accommodation of my feuars at Bowling-green."

The feu-charter also contained the following condition:—"Further, my said disponee and his foresaids shall be bound to pay a proportion of the expense of maintaining the streets and roadways leading to and from the said area of ground and the said property of Bowling-green, until the same shall be taken over as public streets and roads and assessed for as such, and also a proportion of the expense of the drains to be formed upon the said property of Bowling-green and Redhall, and of maintaining the same, such proportions to be according to frontage belonging to my said disponee and his foresaids."

In December 1867 Mr Field feued to John Philip "All and Whole those parts and portions of my lands of Bowling-green, consisting (*First*) of that narrow stripe of ground stretching from Great Junction Street on the north to Burlington Street on the south, and laid down on the feuing-plan of my lands of Bowling-green and Redhall as for the northmost part of a street or roadway to be called Albert Road, but which roadway is not now to be made, together with the wall two feet in thickness erected on the east and south boundaries of the said stripe of ground, and the ground upon which the said wall is built, the said stripe of ground and the ground upon which said wall is built being 42 feet in breadth or thereby; and (*Second*) That area of ground lying between the said stripe of ground above described and Bangor Road, as the said stripe and area of ground are delineated on the plan annexed, and signed as relative hereto, and which stripe and area of ground may be otherwise described as All and Whole that block or area of feuing ground, part of my said lands of Bowling-green, including the part thereof formerly intended to be made into the northmost end of a street or roadway to be called Albert Road."

In January 1868 Mr Philip granted a disposition to Mr Bernard in the following terms:—

"I, John Philip, wood merchant, Leith, heritable proprietor of the subjects hereinafter disponed, considering that Thomas Bernard, brewer in Edinburgh, is entitled to a certain right of servitude over a road intended to have been made through the lands of Bowling-green and Redhall, conform to feu-charter granted by Thomas Field of Bowling-green and Redhall in his favour, dated the 29th June, and recorded in the Register of Sasines the 2d day of July 1864; that the said Thomas Bernard having agreed to renounce and give up said right of servitude in favour of the said Thomas Field, in order to him disponing the ground to be converted into said road to me free and disencumbered thereof, on condition of my granting these presents, and the said Thomas Field having disponed and made over the property

of the said intended road to me, conform to feu-charter in my favour, dated the 19th day of December 1867: Therefore, in implement of my part of said agreement with the said Thomas Bernard, and without any price or other consideration than that above-mentioned being paid for the subjects, I do hereby sell and dispone to the said Thomas Bernard, his heirs and successors whomsoever, heritably and irredeemably, all and whole that piece of ground, part of the area intended to form said road to be called Albert Road, immediately opposite to and adjoining the area of ground containing 27 poles imperial measure, disponed to the said Thomas Bernard by the foresaid feu-charter in his favour."

The pursuer, Mr Crawford, acquired right to both these subjects, and raised this action.

The Lord Ordinary (GIFFORD) pronounced the following interlocutor:—

"*Edinburgh, 2d June* 1874.—The Lord Ordinary having heard parties' procurators and having considered the closed record, title-deeds produced and founded on, and whole process—Finds that, according to the true import and effect of the writs and titles granted by him, the defender is not entitled to occupy or enclose the solum of Burlington Street opposite to the warehouse belonging to the pursuer, so as to prevent the pursuer from having the use of the solum of Burlington Street opposite said warehouse: Therefore finds, declares, decerns, and ordains in terms of the conclusions of the action: Finds the pursuer entitled to expenses, and remits the account thereof, when lodged, to the Auditor of Court to tax the same and to report.

"*Note.*—In the view which the Lord Ordinary takes of this case, the question is, What is the true import, nature, and effect of the feu-contracts or agreements of feu which the defender Mr Field entered into with his vassals? What did the parties to the feu-charters undertake to each other on the one side and on the other? What obligations are expressed, and what are necessarily implied?

"There are no questions in the present case as between singular successors, and there are none as to how far conditions of feu have been created real burdens on the property, for the question really is between the contracting parties themselves. The defender, Mr Field, is himself the granter of both the feu-charters in question, and the pursuer, although not the original feuar under these feu-charters, comes exactly in place of the original feuars, and is bound in precisely the same manner as they would have been.

"The feu-charters involved in the present question are two:—(1) The feu-charter by the defender to Thomas Bernard, 29th June 1864, of the ground on which the pursuer's warehouse is now erected; and (2) The feu-charter by the defender to John Philip, 19th December 1867. The pursuer is now in right of the whole subject contained in the first feu-charter and of a portion of the ground embraced in the second. The question mainly turns upon the terms of the first feu-contract. By this deed the present defender feued to Thomas Bernard, the pursuer's author, an area of ground therein mentioned, which is described as bounded as follows:—'On the north by the area of ground feued by me to Andrew Morton, ironfounder;' 'on the west by Bangor Road, on the east by Albert Road, and on the south by Burlington Street, and including the wall built upon the said area of ground, and forming the south boundary thereof, ... With free ish and entry to the said area of ground by all the roads or streets made or to be made by me for the use and accommodation of my feuars at Bowling-green.'

"At the date of this feu-charter the defender Mr Field was, and still is, proprietor and superior not only of the area feued, but of the whole ground around it on all sides. In particular, he was and is proprietor of the solum of the three streets by which the area is described as bounded on the east, south, and west sides. The north side is bounded by another feu granted by the defender. It is said that at the date of the charter only one of these streets, Bangor Road, was partially formed; but however this may be, there is really no doubt about any of the streets, for upon the back of the feu-charter, and signed by the defender himself, there is a very distinct plan of the feu drawn to scale, showing very completely Bangor Road, Albert Road, and Burlington Street, as bounding the feu on three sides thereof. It is said that this plan is not mentioned in the feu-charter as signed relative thereto. But if there was any force in this very technical objection, it is obviated by another plan annexed to Philip's feu-contract, in right of which the pursuer also is, and which is specially signed by the defender as relative to the deed. Both plans show all the streets in question, particularly Burlington Street, which is the pursuer's south boundary. It is perfectly plain, therefore, that the pursuer and his author took their feu and have built thereon on the faith that it was to be bounded on three sides by the three streets specially named and described, and specially and precisely laid down on the signed plans annexed to the feu-charters.

"Now the question is, Can a superior, after granting such feu-charters and geting expensive subjects erected on the faith thereof,—it might be villas or shop property,—block up without his vassal's consent all or any of the streets bounding the feu on the faith of which the vassals had built, and free ish and entry by which he has expressly granted? It is vain to say the superior is leaving Bangor Road untouched, and only blocking up one side of the pursuer's feu, for if the superior has a right to block up one of the streets, why not any of the streets, or why not all of them? and nothing can turn upon the fact, if it be the fact, that Bangor Road was partially formed at the date of the feu whereas Burlington Street was not. In a question with the superior himself nothing can turn on such accidental circumstance. The pursuer says that Bangor Road was only formed the length of Morton's, that is of a previous feu. The Lord Ordinary has allowed no proof of these facts, as he does not think them material to the issue.

"The Lord Ordinary is very clearly of opinion that under feu-contract s like the present the superior was bound, in common sense as well as in common fairness and honesty, at least to leave open the street ways by which his vassal's property was surrounded. It is true there is no obligation on the superior to make or form the streets, that is to causeway or pave them, and he is not asked to do so, but at all events he must leave them open, and not cover them with buildings. The vassal would never have taken the feu had it not been surrounded by these streets. Its value was, or at all events might be, greatly enhanced by its triple frontage, and it is out of the question for the pursuer to offer to prove that the true front only faces Bangor Road. The vassal is entitled to shift his

front at pleasure and face any way he pleases, or, if he prefers, to face three ways at once. The pursuer was clearly entitled to make a gateway or access by Burlington Street. He is entitled to do so yet at any time—it is part of his contract. But this would be impossible if the defender is to be allowed to cover the solum of Burlington Street even with temporary buildings, and for an indefinite time. The same may be said of the pursuer's lights. He is entitled to have a street way, and therefore uninterrupted lights on three sides of his feu. The Lord Ordinary thinks that the defender's offer to prove an "understanding" that Burlington Street should not be made till a certain watercourse was drained is incompetent. Admittedly there is no obligation on any one to drain the watercourse, and nobody can tell when it will be drained.

"On the short ground, therefore, of clearly implied contract, the Lord Ordinary holds the defender bound to leave the solum of Burlington Street unoccupied opposite the pursuer's property. He thinks the pursuer may himself pave or causeway Burlington Street at that point whenever he pleases. As to Albert Road, the principle has been recognised, for it has been shut up only by consent of everybody interested, and to these arrangements the defender was a party.

"The case chiefly relied on by the defender was that of the *Trustees of Free St Mark's* v. *Taylor & Others*, 26th January 1869, 7 Macph. 415, but the cases are entirely different. *Free St Mark's* case was a case arising between singular successors deriving through a common author. It was a question there, not only whether real servitudes had been constituted, but whether mutual obligations towards each other had been effectually laid upon adjoining or conterminous feuars or vassals, and it was also a question how far the mention of an intended or projected street was really intended to bind any of the parties absolutely to make that street. None of these points arise in the present case, which is one directly between superior and vassal, and simply concerns the interpretation of an express or implied obligation. In the case of *Dennistoun* v. *Thomson*, 22d November 1872, 11 Macph. 121, which arose subsequent to that of *Free St Mark's*, there are important observations explaining the decision in *Free St Mark's* case, and one of the streets involved in *Dennistoun* v. *Thomson* was very similarly circumtanced to Burlington Street, and an implied obligation to leave the solum open was found effectual and was enforced. The present, however, is in all respects an *a fortiori* case."

The defender reclaimed, and pleaded—"(1) The action should be dismissed, in respect the pursuer has no title to sue. (2) All parties interested have not been called. (3) The defender should be assoilzied, in respect that the buildings complained of are entirely within the defender's own property, lands of Redhall, and do not encroach upon any part of the feued lands of Bowling-green. (4) The intended Street called Burlington Street not having been formed, and there being no obligation upon the defender to form said street, at all events *in hoc statu*, the pursuer cannot interfere with the defender in the use of his lands by temporary erections of the kind complained of. (4) The pursuer is barred from objecting to the said erections by the knowledge and acquiescence of himself and his author. (6) Generally, the action is frivolous, uncalled for, and unnecessary, and the defender should be assoilzied, with expenses."

Argued for him—The superior's right of property was absolute up to the boundary of the feu granted. The clause of ish and entry was in general terms, and the superior was not bound to form the streets in question within any particular time. The vassal was only to get access by the roads when they were made, and until that was done the superior was entitled to use the ground for temporary purposes. The erections complained of were temporary, and did not constitute any invasion of the pursuer's right.

Authorities—*Trs. of Free St Mark's* v. *Taylor*, Jan. 26, 1869, 7 Macph. 415; *Dennistoun* v. *Thomson*. Nov. 22, 1872, 11 Macph. 121; *Barr* v. *Robertson*, July 19, 1854, 16 D. 1049; *Carson* v. *Millar*, March 13, 1863, 1 Macph. 604.

The pursuer pleaded—"1. The pursuer is entitled to decree as concluded for, in respect—(1) The buildings and erections complained of are an invasion of the pursuer's rights under the said charter, and are illegal and unwarrantable; (2) The defender is not entitled to rest his buildings and erections on the pursuer's wall; (3) The defender is not entitled to obstruct the pursuer's lights by means of buildings or erections on Burlington Street.

Argued for him—There was an express grant by the superior to his vassals of free ish and entry to the ground in question. There was a plan signed by the superior appended to the feu-charter, and referred to therein as relative thereto. The description of the boundaries, all of which were on the superior's own property, suggested that the vassal was to have immediate ish and entry; were it not so, the superior would have had the power of excluding the vassal altogether until he chose to form the streets.

At advising—

Lord President—This is a question between superior and vassal, and it seems to me that one class of the cases cited to us has no application—I mean that class of which the case of the *Trs. o Free St Mark's* is the most prominent, where there are two parties deriving their right to a subject from a common author, and holding it under no obligation to give up any portion of it unless that obligation is imposed in the title. The question here is whether there is any agreement here, express or implied, to form these streets, and whether that obligation is binding on the superior now—not as an obligation immediately to form the streets but at some time or other to form these roads or streets, and meantime to reserve the ground for that purpose. Every case of this kind depends on the terms of the titles, and I think the Lord Ordinary was quite right in not allowing the enquiry which was asked for. The feu-charter in favour of Mr Bernard gives a subject which is described as bounded "on the west by Bangor Road, on the east by Albert Road, and on the south by Burlington Street," and on the north by another feu. Now, it is said on behalf of the defender that this subject, at the time when the feu was given off, had no frontage except to Bangor Road, because that was the only street which had been formed at that time. But it seems to me that if it had been intended that Bangor Road should be the only access, the description of the subject would have been in very different terms, instead of describing it as bounded

on three sides by streets. Then there occurs the clause "with free ish and entry to the said area of ground by all the roads or streets made or to be made by me for the use and accommodation of my feuars at Bowling Green." Now, if that clause had stood alone, and there had been nothing beyond it in the deed, and all we could have discovered about the superior's intention had been in the feuing plan, I should have said that this clause would not have given the feuar any right to any particular entry. But I think the meaning was to give him access by three roads, for in another part of the feu-charter there is laid on him an obligation to pay part of the expense of maintaining the streets and roadways "according to frontage." Now I suspect the superior would be very unwilling to limit Mr Bernard's obligation to his frontage to Bangor Road, when in fact he would have all the frontage to Burlington Street as soon as that street was made; but what makes it quite clear to my mind is that there is a plan made for the purpose of this feu-charter. Now it is quite true that the mere exhibition of a feuing plan imposes no obligation on the superior to make any particular road, and does not prevent him from altering the general plan unless it is expressly referred to in the charter. But here there is no reference at all. The plan was a special plan made for the purpose of this very feu-charter, and in it, drawn to scale, we have the streets laid down as part of the contract; it is a plan written into the charter. I think there is quite enough to show an implied agreement to form these streets for the benefit of Mr Bernard and the other feuars. Then there is the matter of Albert Road, which I think throws a good deal of light on the views of the parties. The superior did not think he could supersede the formation of Albert Road without the consent of his vassals, and so he enters into an agreement with Philip and Bernard, by which it was agreed that the ground which had been intended for Albert Road should be feued to Philip, except a small part which Philip was to hand over to Bernard as the price of his consent to the abandonment of Albert Road. Mr Field would not have made that agreement unless he had thought that Bernard could have stopped him, nor would Bernard have given up the ground. So it seems to me that this arrangement shows that Bernard had a *jus quæsitum*. It is not necessary to examine in detail all the expressions in the different deeds. I do not think the case is a doubtful one. There is quite enough to imply an agreement to set apart this ground for streets and roads, and I don't think the superior is in the meantime entitled to make any use of it inconsistent with that purpose.

Lord Deas—There is no question in this case as to singular successors; the whole question is between the original superior and his own vassal, and all we have to do is to decide what is the fair meaning of the deeds before us, and if we find that the fair construction is to give the right claimed that is enough. That being the nature of the case, the question is whether there was any right given to the vassal of free ish and entry at any time by these bits of ground. I have no doubt about it. The argument from these being made boundaries is a strong one, but I take it that a right of ish and entry is given, though it is certainly a general one. Next, when we see that the defender, being proprietor of the subjects, describes his ground as bounded by streets, what more do we want to show that he meant to give ish and entry by these streets or roads? He might have done anything else with the ground which he calls streets or roads, but he has not done anything else with it, and it comes in substance to be a grant of ish and entry by these roads. I agree with your Lordship that a reference to a general feuing plan is very different from the reference to this plan, which was made for the express purpose of this charter. I have no doubt that ish and entry is given, and all that remains is the question whether it is immediate. There is nothing to make it future that I can see. Making a street does not mean paving it. If the superior is entitled to exclude the feuar now, there seems nothing to prevent his doing so indefinitely and for any length of time, and so make his feu useless to him. I have no doubt that the right conferred is an immediate right.

Lord Ardmillan—I think this is a tolerably clear case. At the date of the feu-charter Bangor Road was the only one of these streets which was made, but the subject is not described in reference to Bangor Road only, the other boundaries named being intended streets, and that description is an element in determining the rights of parties. Secondly, the expense of maintaining the access to be given is to be proportioned according to the feuar's frontage to each of the streets, but how can it be said that the vassal is to pay according to his frontage to Burlington Street if he is not to have any. In the third place, the plan of the subjects is not a general feuing plan, but a particular plan of the ground prepared for the occasion, and that I think is an important element in the case. Lastly, the whole agreement as to the abandonment of the plan for making Albert Road plainly points to the same conclusion. I think there is a clearly implied contract that the superior shall not interfere with the vassals' frontage, or with their free ish and entry, and I agree with your Lordships.

Lord Mure—I am of the same opinion. I think on the face of the feu-contract there is a clear case of implied obligation on the superior to do nothing to impair his vassals' right of access. When the property is described as bounded by streets, it is quite plain that that description is put in with a view to giving the parties ish and entry by those streets. Then there is the provision as to maintenance and the signed plan, and the arrangement between Philip and Bernard as to Albert Road makes the matter still clearer.

The Court pronounced the following interlocutor;—

> "The Lords having heard counsel on the reclaiming note for the defender against Lord Gifford's interlocutor, dated 2d June 1874, Adhere to the said interlocutor, and refuse the reclaiming note: Find the pursuer entitled to additional expenses: Allow an account thereof to be given in, and remit the same, when lodged, to the Auditor to tax and report."

Counsel for Pursuer—Dean of Faculty (Clark), Q.C., and Asher. Agents—M'Ewen & Carment, W.S.

Counsel for Defender—Marshall and J. P. B. Robertson. Agent—James Somerville, S.S.C.

Thursday, October 15.

FIRST DIVISION.

[Sheriff of Lanarkshire.

PARK *v.* WEIR.

Appeal—Act of Sederunt, 10th March 1870, *sec.* 3.

Where an appellant failed to lodge a copy of the papers with the Clerk of Court, and was not reponed within the statutory time,—*held* that the Sheriff's judgment was final.

An appeal in this case was received on July 14, 1874, six days before the end of Session. The appellant printed the papers and boxed them on the first box-day, which was August 27, but failed to lodge within fourteen days after the appeal a copy of the papers with the Clerk of Court, as required by sec. 3, sub-section 2. The process was re-transmitted to the Sheriff-court in respect of the abandonment of the appeal. The appellant was not reponed within eight days, as required by sub-section 3, and the Court held that the judgment of the Sheriff had become final, in terms of sub-section 5.

Counsel for Appellant — Alison. Agent—William Livingstone, S.S.C.

Counsel for Respondent—M'Kechnie. Agent—Thomas Carmichael, S.S.C.

Friday, October 16.

FIRST DIVISION.

[Sheriff of Midlothian.

SIR DAVID BAIRD *v.* PETER GLENDINNING.

Appeal—Sheriff Court Act 1853, § 24.

An interlocutor by a sheriff granting warrant to a judicial manager under a sequestration to make payment of rent due to the landlord, *held* to be appealable under the Sheriff Court Act 1853, sec. 24.

The question in this case was whether an interlocutor of the Sheriff granting warrant to the judicial manager of a farm which had been sequestrated to pay the rent due to the landlord, was an interlocutor which was appealable under the Sheriff Court Act 1853, sec. 24.

The interlocutor was as follows:—

"*Haddington, 30th April* 1874.—The Sheriff-Substitute having resumed consideration of this case, with the interim state of the intromissions of the judicial manager, approves of said state of intromissions so far as the judicial manager charges against the proceeds of the sales of the crop sequestrated the outlays made by him in labouring the farm in preparation for said crop. In respect the judicial manager has in his hands funds more than sufficient to meet the rent sequestrated for, due at the term of Candlemas last, Grants warrant to pay said rent to the petitioner, with the interest thereof, at the rate of £5 per centum per annum from the date at which the same became due till payment; appoints the judicial manager to state in his account of intromissions any bank interest he is paid or is charged with, and appoints this cause to be enrolled for further procedure when the whole sequestrated effects have been realized.

"*Note.*—The Sheriff-Substitute would refer to his note to his interlocutor pronounced in the process of sequestration for the rent of the same lands for crop 1872, for a statement of the grounds on which he is of opinion that the cost of labouring the farm for crop 1873 falls to be charged against the proceeds of that crop, and also for the reason why he has ordered the judicial manager to add to his account of intromissions in this process any sums of bank interest he has received or been charged. The judicial manager having admittedly in his hands sufficient to pay the rent sequestrated for, due at the term of Candlemas last, an order for payment thereof has been granted.

The LORD PRESIDENT—(*After reading the interlocutor.*)—It is objected that this is not an interlocutor which is appealable under section 24 of the Sheriff Court Act 1853. On the other hand, it is said that a warrant such as this to an officer of Court authorising him to pay, is equivalent to an interim decree for payment. Strictly speaking, no doubt the interlocutor does not fall under sec. 24, but then the question comes to be whether under the words "interim decree," "interim warrant" is not intended to be included. It seems to me that to read it so is quite within the policy of the statute. This is the proper,—indeed it is the only—form of proceeding when money is in the hands of an officer of Court. The Court does not give decree against its own officer, but simply authorises or ordains him to do what is necessary. It would be very inconvenient if the statute did not apply to an interlocutor of this kind.

Counsel for Appellant—Robertson. Agent—T. White, S.S.C.

Counsel for Respondent — Blair. Agents—Hunter, Blair, & Cowan, W.S.

Saturday, October 17.

SECOND DIVISION.

[Lord Mure, Ordinary.

MUIR *v.* FLEMING.

Process — Reclaiming Note—6 *Geo. IV. c.* 120—*A.S.* 1828, *sec.* 77.

A reclaiming note with extensive manuscript additions to the closed record appended, *refused* as incompetent.

Friday, October 23.

FIRST DIVISION.

[Lord Gifford, Ordinary.

ROBERTSON *v.* LAWSON.

Sale—Contract—Rei Interventus.

An owner of a house let it to a tenant for one year, with option to the latter to buy it at the end of the lease for a price to be fixed by valuators mutually chosen, the contract being by missives of lease *ex facie* regular During the currency of the lease the owner sold the property to a third party. The tenant raised an action against the seller and buyer, which was not defended by the seller, and the buyer agreed to implement the contract so far as to refer the matter to two valuators, and to sell the subject for the price fixed by