

No 112. to enter again to the possession, and remain therein till the expiration of the tack; and ordains parties to be ready to debate against next calling, upon the other conclusions of the libel."

A petition for Innes, against this interlocutor, being advised, with answers, 22d December 1880, "THE LORDS adhered to the interlocutor of the Lord Ordinary reclaimed against, and refused, the desire of the petition."

Act. *Francis Russel.*

Alt. *Lord Maitland.*

Clerk, *Menzies.*

*Fol. Dic. v. 4. p. 224. Fac. Col. No 11. p. 21.*

1793. *February 26.*

The EARL and COUNTESS of MORTON *against* The REPRESENTATIVES of Daniel Murray and Others.

No 113.

A summons of removing on the act of sederunt, libelled that the tenant should be decerned to remove, or find caution for arrears and the rents of five subsequent years, and decree passed accordingly. The obligation of the cautioners in a suspension of this decree was limited to what was decreed for by the Sheriff.

The act was held not to apply to illiquid prestations.

ALEXANDER RODGER, one of the Earl of Morton's tenants, having fallen more than a year's rent in arrear, a process of removing upon the act of sederunt 1756 was brought against him before the Sheriff. The summons, after specifying the sum due as arrears of money-rent, and conversion of kain, concluded that Rodger should be decerned either to remove, or to find caution for payment of the said arrears, and for punctual payment of the rents for five subsequent years.

The Sheriff decerned accordingly.

A bill of suspension was passed, on condition of his "finding caution for his whole arrears, and the rents for the five subsequent years."

Daniel Murray, and others, became his cautioners, and were taken bound, not only for the arrears and rent for the five subsequent years, but also for "whatever sums may be awarded, in name of damages and violent profits, and such other sum, or sums of money, as the said Alexander Rodger shall be found liable in to the chargers, in case it shall be found, by the Lords of Council and Session, after discussing the suspension to be expedite hereupon, that the said Alexander Rodger ought so to do."

The Earl of Morton afterwards brought an action of damages against the cautioners, for the non-performance of certain prestations relating to inclosures, &c. which were stipulated in Rodger's tack. The cautioners

*Pleaded,* In this, as in every other suspension, the caution found must be regulated by the demand of the charger. In the summons before the Sheriff nothing is said about the prestations now claimed.

The act of sederunt, and the interlocutor passing the bill of suspension, require caution only for rent and arrears; expressions which, in technical, as well as common language, relate to the liquid tack-duty, and not to illiquid prestations. The latter are not connected with one year of the tack more than ano-

ther, and could not have been in the view of the cautioners when they undertook the obligation.

No 113.

By the above narrated clause of the bond nothing more is meant, than that in case the reasons of suspension should be found to be groundless, the landlord should be indemnified for the passing of the bill.

*Answered,* When the act of sederunt fixed upon the tenant's being a year's rent in arrear, as such a mark of his bankruptcy as to entitle the landlord to recover possession of his farm, or have better security for performance of the contract, it never meant to distinguish between the annual tack-duty and those prestations which are often of more importance, and on account of which its amount is diminished. The words "arrear and rent," which are used in the act of sederunt, comprehend every thing that is exigible by the landlord.

The act declares, that the bill shall be passed upon caution, "for implement of what shall be decerned for in the suspension or advocation, and damages and expenses." Now, the prestation might surely have been decerned for in the suspension. Besides, the word "implement" would not have been used if the payment of money only had been in view.

This is confirmed by the clause in the bond stated in the narrative.

THE LORD ORDINARY, and the Court, by their first interlocutor, (19th December 1792), decerned against the cautioners for damages, on account of the tenant's not having fulfilled certain prestations due before their bond was granted.

But, upon advising a reclaiming petition and answers, the LORDS found, "that the petitioner's bond of cautionry extends only to the rents and arrears of rent, and conversion of kain specified in the libel of removing before the Sheriff, and decret thereon." It was at the same time observed by some of the Judges, that independent of the terms of the libel, and decree, the act of sederunt applies only to liquid annual payments, and not to illiquid prestations.

A reclaiming petition was refused, without answers, on the 21st May 1793.

Lord Ordinary, Justice-Clerk.  
Alt. Patison.

Act. Geo. Fergusson, Cha. Hope.  
Clerk, Menzies.

D. D.

Fol. Dic. v. 4. p. 225. Fac. Col. No. 37. p. 74.

1796. July 5. JOHN LOW against ANDREW KNOWLES.

JOHN LOW held a lease of a farm, granted in favour of assignees. One half of the rent was payable on the 20th December, and the other on the 20th June, for the crop preceding.

Low assigned the lease to Alexander Wilson, who again assigned it to Andrew Knowles; and he reaped the crop, and was liable for the rent of the year 1793.

No 114.

The act of sederunt 1756, § 5. does not apply, unless the tenant be a full year's rent in arrear at the date of