

No 75.

A ranking and sale, without sequestration, bars not ordinary acts of management, but bars extraordinary acts, such as a new lease during the currency of the former.

1766. February 27. THOMAS CARLYLE *against* GEORGE LOWTHER.

SIR JOHN DOUGLAS granted a fifteen years lease of the farm of Todholes to George Lowther for a rent of L. 33 Sterling, commencing at Candlemas 1749. In the year 1756, a ranking and sale was commenced of Sir John's estate. In the year 1758, Sir John granted a new fifteen years lease of the said farm to the same George Lowther for a rent of L. 40 Sterling, to commence after expiry of the former lease, viz. Candlemas 1764. The estate was sequestrated a few months after, and Thomas Carlyle appointed factor. The factor judging it to be for the interest of the creditors to oppose this new lease, as containing a rent much under the real rent of the land, did, in spring 1763, bring an action of removing, which was followed with a reduction. And the Lords reduced the tack, as being granted during the dependence of the ranking and sale.

A ranking and sale without sequestration bars not ordinary acts of management, but ought to bar extraordinary acts, such as a new lease during the currency of a former. The rule is, *nihil innovandum pendente lite*; and if bankrupts were permitted, after a ranking and sale, to exercise without limitation every act of property, creditors would be in a ticklish situation. In this case there was good evidence that a higher rent might be obtained. But it appears to me, that to challenge an extraordinary act of management done in the present circumstances, it is not necessary to prove lesion. It is sufficient that it is an extraordinary act, leaving to the defender to prove that there is no lesion.

Fol. Dic. v. 3. p. 392. Sel. Dec. No 242. p. 316.

1778. July 7.

CREDITORS of the YORK-BUILDING COMPANY *against* JAMES FORDYCE and Others.

No 76.

A process of sale, and petition to sequestrate interrupt the debtor's powers of administration over the subject. See No 75. *supra*, in conformity with which this case was decided.

THE York-buildings Company, in 1719, purchased from the Crown several forfeited estates in Scotland. In 1721, their commissioners granted a lease of the lands of Belhelvie, a part of these estates, to George Fordyce, his heirs, &c. at the rent of L. 500, for fifteen years, which lease was prorogated for other fourteen years from its expiry.

Soon after the purchase of the forfeited estates, the affairs of the Company went into disorder. In 1720, an act passed, enabling them to raise money, by a lottery of annuities out of these estates; and, for the security of the annuitants, the Company granted a trust-deed, empowering the trustees, in case of the non-payment of the annuities, to enter into possession of the lands. They borrowed, afterwards, another large sum upon an heritable security over these estates, which were likewise adjudged by the Duke of Norfolk, and