

But a majority of the Court were of the same opinion with the Lord Ordinary. The opposite doctrine, it was observed, would encourage tenants to take the chance of defending themselves before the inferior court on captious and frivolous grounds, because, although they should fail, they would have it still in reserve to frustrate the decree of the Sheriff, by offering to purge the irritancy before the Supreme Court.

The Lords "adhered."

Afterwards, the decree having been irregularly extracted, some proceedings took place against the tenant, which gave occasion to a summary petition and complaint at his instance against the landlord; and the matter was then settled by a submission.

Lord Ordinary, *Justice-Clerk Eskgrove.*
Alt. *H. Erskine, H. D. Inglis*

For the Charger, *Solicitor-General Blair, J. Clerk.*
Clerk, *Colquhoun.*

R. D.

Fac. Coll. No. 195. p. 448.

1799. December 7. *The DUKE OF ARGYLE against ROBERT RUSSEL.*

THE Duke of Argyle let an arable farm to James Guild, for ten years from Martinmas 1788, at the rent of £73.

Guild having become infirm during the currency of the lease, the landlord allowed the lands to be managed by Robert Russel, the tenant's son-in-law.

Prior to Whitsunday 1798, Guild was regularly warned to remove at the ensuing Martinmas; but a negotiation having been opened between the Duke's factor and Russel, for a new lease, they, in June 1798, entered into mutual missives, by which it was agreed, that Russel should remain in possession of the farm from Martinmas 1798 to Martinmas 1799, for payment of £100 for that year.

In January 1799, Russel made an offer of £110 of yearly rent, for a lease of the farm for nineteen years from Martinmas 1799, which was rejected.

Prior to Whitsunday 1799, Guild was again regularly warned to remove at Martinmas 1799, but no warning was used against Russel, who was apparently the lessee under the missives executed in June 1798.

Russel having understood that the Duke of Argyle was to endeavour to remove him on the warning used against Guild, presented a bill of suspension of the threatened decree of removing, in which he contended, that as no warning had been used against himself, he was entitled to remain in possession for another year.

To this it was answered for the landlord, 1st, That although the missives of 1798 were in Russel's name, it was fully understood, that he was to possess the lands from Martinmas 1798 to Martinmas 1799, for behoof of Guild.

No. 1.

No. 2.

The tenant of an arable farm for one year, found, in the circumstances of this case, to be removeable without a formal warning.

No. 2. *2dly*, That where a farm is let for a single year, a formal warning is not required. And, *lastly*, That, supposing a formal warning to be necessary, Russel was put *in mala fide* to plead its omission, by his written offer in January 1799, for a new lease to commence at the very term at which the respondent was now endeavouring to remove him.

The Lord Ordinary took the question to report on the bill, answers, and replies.

The Court, on the whole circumstances of the case, thought that the Duke was entitled to remove Russel without a formal warning.

The Lords, almost unanimously, remitted to the Lord Ordinary to refuse the bill of suspension.

Lord Ordinary, *Justice-Clerk Eskgrove.*

Alt. *Arch. Campbell, junior.*

R. D.

Fac. Coll. (APPENDIX,) No. 8. p. 14.

1800. November 18. LORD STONEFIELD *against* JOHN MACARTHUR.

No. 3.

A tenant whose lease excluded assignees and subtenants, and by which it was declared under pain of nullity that he should possess the farm with his own stocking, having become insolvent, his stocking was sold by his creditors, and re-purchased by his relations for behoof of his eldest son, to whom also the father assigned the lease. The tenant, subsequent to his bankruptcy, had found caution for the rent of the next five years. Under

JOHN MACARTHUR was a tenant of Lord Stonefield, on a grass farm in Argyleshire. The lease secluded assignees and subtenants, and it was provided by a special clause, that the tenant should be "bound and obliged to possess the same with his own stock allenary;" and that "not only in the event of one year's tack duty running into the second unpaid, but also upon the said John Macarthur, and his foresaids, their failure in performance of any of the conditions above mentioned, then, and in that case, this present tack shall be come *ipso facto* void and null; and it shall be lawful to the landlord and his foresaids, to set, use, and dispose thereof as if this present tack and agreement had never been entered into, and that without any declarator or process at law whatever."

In the beginning of 1797, Macarthur having become insolvent, a sequestration of his estate was awarded; and on the 16th March of that year, the trustee on his sequestrated estate gave written intimation to Lord Stonefield's factor, that Macarthur's creditors were about to dispose of the stocking on the farm, of which they were not to keep possession after Whitsunday.

The stocking was accordingly sold by the creditors; but, through the medium of some friends of the tenant, it was purchased for behoof of Macarthur's third son, and allowed to remain on the farm.

The tenant was at this time more than a year's rent in arrear; and both on this account, and in consequence of the above notification of Macarthur's bankruptcy, Lord Stonefield gave instructions to his factor to take the necessary steps for getting him removed from the farm. The factor not having the tack in his custody, and being ignorant of the clause by which he was taken bound to possess the farm with his own stock, brought an action, in his name, and founded