

No 38.

Found that an
apparent heir
cannot re-
move tenants.

1757. December 15. THOMAS PATON *against* JOHN MACINTOSH.

THE Sheriff of Angus having decerned in a removing, at the instance of John M'Intosh, an apparent heir, against Thomas Paton; Paton suspended on this ground, that an apparent heir could not sue in a removing; and quoted a case, Robert Boyd of Penkill against M'Garva, which had been the subject of Lord Chesterhall's report, when upon his trials, in which the Court had unanimously found so. THE LORDS suspended the letters.

For Charger, *Mackintosh.*For Suspender, *J. Dalrymple.*

J. D.

Fac. Col. No 69. p. 118.

1802. June 24.

FERGUSON *against* MORISON.

No 39.

Title to pur
sue removing
in the case of
a purchaser
not infest.

IN November 1801, Daniel Ferguson appointed Duncan Paterson his factor, with the usual powers, including that of removing tenants, one of whom, Peter Ferguson, by verbal agreement, held from year to year, a small possession on his estate.

In December 1801, Ferguson sold his estate to Morison, whose term of entry was Whitsunday 1802.

More than forty days before that term, and while Morison was not yet infest, a summons of removing was executed against Peter Ferguson, at the instance of Morison, the purchaser, and Paterson the factor, and decree in absence was obtained. Peter Ferguson, the tenant, presented a bill of suspension, upon the ground, that Daniel Ferguson was denuded, and Morison not infest.

THE LORD ORDINARY on the Bills, being doubtful, if the combination attempted in the summons of the rights of the late proprietor, and of the purchaser, amounted to a sufficient title to remove tenants, reported the cause from the Bill-Chamber. But the COURT considered the title derived from both seller and purchaser to be sufficient; and remitted to his Lordship to refuse the bill.

Lord Ordinary, *Hernand.*For the Suspender, *Monnypenny.*Agent, *Ro. Mackenzie, W. S.*For the Charger, *Fletcher.*Agent, *D. Thomson, W. S.*

J.

Fac. Col. No 50. p. 103.