

from Whitsunday 1753: "But with and under this special quality and provision, that, in case of a judicial sale of the lands before the expiration thereof, it shall be in the option of the purchaser to be free of this tack at the expiration of three years from and after his purchase and entry to the lands; which option he shall be obliged to declare by a writing under his hand one full year before the lapse of the said three years, to be intimated under form of instrument," &c. The estate having been purchased by the Lord-Advocate, he made intimation to the tenants to remove, in terms of the above quality. The tenant objected to his title, as not clothed with infeftment. The Court were of opinion that the purchaser, who succeeded to every right, either in the factor or Court, was entitled to remove the tenants without infeftment, just as much as if he himself had set the tacks. The argument was strengthened by the special clause in the tacks above narrated.

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1773. SUMMER. WILLIAM ALEXANDER *against* The TENANTS of DORNOCH.

THE estate of Dornoch having been brought to a judicial sale, in lots, the fishings were bought by William Alexander, merchant in Edinburgh, who, having extracted his decret of sale, and obtained from the factor an assignation to a process of removing, which the factor had raised before the Sheriff against the tenants, insisted in the process. But it being objected that he had not yet completed his titles by infeftment, the Sheriff sustained the objection; and so did Lord Monboddo, 19th February 1771, in a process of advocatation brought by Mr Alexander.

His Lordship, however, on a representation stating the above mentioned decision in the case of Lord-Advocate, pronounced this interlocutor:—"2d July 1771. Having considered this representation, with the answers, and the late decision of the Court in the case of the Lord-Advocate, and that Mr Alexander is insisting in this removing, not only as purchaser, but as assignee by the factor to a process of removing which was depending before the sale, alters the former interlocutor, sustains Mr Alexander's title to insist in this action," &c. He afterwards decerned in the removing, 18th January 1773.

And, upon advising petition and answers, the Lords adhered.

In this case all the tenants, except one, had formerly been removed by the factor, and were again admitted to the possession by the factor; and the one above excepted never had been in possession at all.

In this case also, the Lords were of opinion, that their factor could pursue a removing on the Act of Sederunt 1756, as well as any heritor.

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1766. February 27. CARLYLE, Factor on Kilhead, *against* LOWTHER.

As a factor on a sequestrated estate ought to have all the powers of a proprietor infeft, in order to enable him to manage it to the best advantage,