

1777. January 16. CAMPBELL against MACALISTER.

THE proper execution, on a decret of removing, is to eject the tenant in virtue of a precept on letters on ejection. This is done symbolically, by throwing part of the tenant's furniture to the door, extinguishing his fire, &c. Archibald Campbell of Askomill recovered decret of removing against Duncan MacAlister, his tenant, in certain lands near Campbeltown; and he ejected MacAlister symbolically, having extracted his decret before intimation of a bill of suspension upon which MacAlister had obtained a sist, the symbolical ejection and sist being dated the same day. Afterwards the bill was passed with advice of the Lords, the suspender finding caution for damages and violent profits, 7th February 1776.

At discussing, the chief point which occurred was the competency of a suspension of the decret of removing; the same having been carried into execution by the ejection, so that the only remedy competent was by reduction. The Lords seemed to be of opinion that the symbolical form of ejection by extinguishing the fire, &c. was a good ejection, and was almost the only method practised; a real ejection, by turning the family to the street, being seldom practised. But then they thought, that, as there lay good objections to the decret of removing, which stood upon a rotten foundation, and as the ejection was only symbolical, it was in their power to give relief. And therefore they "repelled the objection to the competency of the suspension; and upon the merits they suspended the letters *simpliciter*, and found expenses due." And this day, 16th January 1777, they refused a reclaiming petition, without answers, and adhered.

As to the merits of the decret of removing, the Lords thought it oppressive. The tenant had paid up, immediately after being acquainted of the decret, which was in absence, though indeed he was personally cited, every shilling of arrears, and all expenses, and was willing to find caution *in futurum*, but which was not insisted for, being unnecessary. There was no conventional irritancy in the tack, but only a legal one, of which the master had endeavoured to take advantage, but which had been purged by the tenant as above; and the decret decerned the tenant to remove at the Whitsunday from his whole possession, although, in fact, by the tack, the entry was to the houses and grass at the Whitsunday, and to the arable lands at Haliday. Upon all these reasons, the Lords were unanimous as to the merits of the decret of removing; but they differed, whether, in point of form, the remedy against it was competent by suspension, or by reduction. The majority, however, were of opinion that, in this case, it was competent by suspension.

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1777. January . FALCONERS against SMITH.

HUGH Falconer, merchant in Nairn, and James Falconer at Draikies, commissioners for William Macintosh of Aberarder, pursued a removing, on the Act of Sederunt 1756, before the Sheriff of Inverness, against Finlay Smith,