

party removed, and intrusion after the possession had been long void, or so long as the heritor might have easily known that it was so. No 130.

*Fo. Dic. v. 2. p. 339. Forbes, p. 705.*

1803. November 19. MACEWAN against PATERSON.

No 131.

ANDREW WAUCHOPE of Cakemuir granted to Robert Paterson a lease of the lands of Easter Cakemuir and Blackcastle, for nineteen years. The lease commenced, as to the houses, yards, and grass, at Whitsunday 1770, and as to the arable lands, at the separation of that year's crop from the ground. In the year 1789, a renewal of the lease was granted to Paterson, for thirteen years, from the expiration of the original term. After the expiration of this second term, Paterson was allowed to remain in possession, upon tacit relocation, until Wednesday 1803; prior to which, he received a summons of removing, at the instance of William Macewan, writer in Edinburgh, factor *loco tutoris* to Neil Wauchope of Cakemuir, the proprietor of the farm.

An out-going tenant must remove from the barns at Martinmas.

No objection being made by the tenant, a decret of removing was pronounced, and a charge was given accordingly. Paterson quitted possession of all the houses of the farm at Whitsunday 1803, except the barns, of which he contended he was entitled to keep possession until the crop on the ground was threshed out and disposed of; and accordingly he presented a bill of suspension, pleading, that such was the established usage of the country in similar cases.

THE LORD ORDINARY on the bills, (July 6, 1803.) "being of opinion, that the complainer has no right to retain possession of the barns in question, after the term of Martinmas next; appoints the bill to be answered within fourteen days as to the complainer possessing the barns till that time, and sists execution." And upon advising the bill, with answers and replies, the Lord Ordinary refused the bill.

And a petition against this interlocutor was refused, without answers.

Lord Ordinary, *Polkemmet.*

For the Petitioner, *Thomson.*

Agent, *Geo. Tod.*

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*Fac. Col. No 120. p. 267.*