

SUMMER SESSION 1877.

COURT OF SESSION.

Saturday, May 12.

SECOND DIVISION.

[Sheriff of Lanark.]

APPEAL—DICKSON AND ANOTHER *v.*
GRAHAM.

Lease—Sheriff—Summary Petition.

Circumstances in which held that an application by a landlord for authority to execute repairs on the buildings, fences, gates, and drains of a farm at the expense of his outgoing tenant, brought three months after the tenant had ceded possession, was competent.

In March 1876 Lord Dalhousie, the proprietor, and Mr Dickson, the tenant, of Pitskelly, presented a petition in the Sheriff Court of Forfarshire, averring that Mr Graham, who had been tenant of Pitskelly on a nineteen years' lease which expired at Martinmas 1875, had, in violation of the obligations incumbent on him under the said lease, left the buildings, fences, gates, and drains on the said farm in a state of bad repair, and that he refused to execute the necessary repairs. The prayer of the petition was that the Sheriff should "authorise the petitioners to execute the works necessary for putting the said buildings, fences, gates, and drains in good order and complete repair, as required by the said lease, at the sight of some party to be appointed by your Lordship, and to decern against the respondent for the expense thereof, together with the expense of this petition and of the procedure to follow hereon."

The respondent denied the alleged disrepair, and averred that the buildings, fences, &c., had been much dilapidated since the petitioner Mr Dickson's entry at Martinmas 1875. He further averred that no complaints had been made till this petition was brought.

In answer to this last averment, the petitioner stated that Lord Dalhousie's agents had, prior to Martinmas 1875, pointed out to the respondent that the buildings and fences were in bad order, and sent him a report by Mr Maclaren, architect, pointing out what repairs were necessary, and estimating £66 as the cost.

The defender pleaded, *inter alia*, that the action not having been brought *tempestive*, ought to be dismissed.

The Sheriff-Substitute (CHEYNE) refused the petition.

On appeal, the Sheriff (MAITLAND HERIOT) recalled this interlocutor, and before answer allowed the petitioners to execute the necessary works at the sight of Robert Blackadder, architect, Dundee.

Mr Blackadder having reported, the Sheriff pronounced the following interlocutor:—

"The Sheriff having resumed consideration of this case, along with the reports by Mr Blackadder, productions, and whole process, dismisses the petition, reserving to the petitioners, or either of them, to take such other action in the premises as may be competent, and to the respondent his defences thereto as accords: Finds no expenses due to or by either party, and decerns.

"*Note.*—The Sheriff can find no materials in process for coming to a satisfactory decision. Mr Maclaren reckoned at Martinmas that it would take £66 to fulfil the respondent's obligations under the tack.

"In August following it has cost double that amount, or upwards of £130, to put things to rights. In such circumstances the Sheriff finds it impossible to decern against the respondent for payment of this £130 when the petitioners' own valuator estimated in November that £66 only would be needed to put the steading, &c., in order. It would rather appear that between November and August about £66 of further damage had been done by the petitioner Dickson. But then it may be said, why not give decree for the £66 as fixed by Maclaren? The petitioners have since departed from part of their demand so far as hedge and ditches were concerned, and the respondent, since Mr Maclaren's estimate was made up, had executed some repairs. The Sheriff therefore finds it impossible in this process to determine what precise amount should be paid by the respondent."

The petitioner appealed to the Court of Session.

Authorities—*Baird v. Mount*, 1 Rettie 1119; Act of Sederunt 1839, sec. 137.

The Court unanimously held that the petition was not rendered incompetent by the lapse of time which had occurred, and that all the relative facts might be ascertained by proof in the usual way, and accordingly remitted to the Sheriff for proof.

Counsel for Appellant—Kinnear—Mackintosh. Agents—Mackenzie & Kermack, W.S.

Counsel for Respondent—Balfour—J. P. B. Robertson. Agents—M'Lachlan & Rodger, W.S.