

granted by him of whatsoever tenor they be, *conjunctis personis*, or to such as were the time of his decease *in familia*; and that farther it could not be sustained.

*Advocates' MS. No. 221, folio 105.*

1671. *July 13 and 14.* MR. THOMAS BAIRD, Advocate, *against* JOHN INGLIS, Advocate.

*July 13.*—IN the ejection pursued by Mr. Thomas Baird, advocate, against John Inglis, likewise advocate, for ejecting the said John furth of a dwelling-house pertaining to the pursuer, and possessed these several years by the said John; he having alleged many things, and all being repelled, viz. that he was never warned to remove, but allenarly a woman who sits there by his tolerance; that the decret of removing was given by the bailies of Edinburgh, who were not Judges competent to any member of the College of Justice; that the pursuer set him a verbal tack, and promised not to bid him flit: which assurances and promises imported at least a tack for a year; and after that, he bruiking by tacit relocation, he behoved to be warned ere he could remove.

Thir were repelled, because it was answered that the pursuer never set his house to the said John, but only to that woman, so John was only her sub-tenant, so that he had no necessity to warn him but only her; neither made it ought that he paid only the mail and not she.

He at last ALLEGED he had waired sundry considerable reparations upon the house, which were both necessary and profitable, which behoved to be allowed to him ere he could remove. ANSWERED,—What he did of this kind was upon his hazard, unless the landlord had approven thereof, or had promised to refund to him the same: and the most he can seek is, to take the same with him; seeing *qui in rem alienam sciens et sic mala fide impendit, impensas non deducit*. Next, though ye have made it of a newer fashion, yet I like the old way better and will have it so.

REPLIED,—The landlord consented in so far as *scivit, tacuit, et non contradixit*.

The Lords found, if the reparations were necessary, or such as thereby the house might set for more mail, that then he should have *retentionem rei* till the same were repaid to him; and that he was not obliged to remove till that were done.

*Advocates' MS. No. 220, folio 104.*

*July 14.*—IN the foresaid case, at No. 220, the Lords ordained the deacon of the wrights, with two other tradesmen, to go in the afternoon with my Lord Colinton and view the house and reparations made thereon, and to report how far they judge the house meliorated thereby.

*Advocates' MS. No. 222, folio 105.*