

E. 1384 Sterling for his board-wages. *Objected*, The Dutchess had a 2d and 3d table for her servants, where he either got, or might have got his diet, and therefore it is most disingenuous to seek it twice. THE LORDS ordained trial to be taken of the establishment of her family, and what tables she kept during that time. *7mo*, He craved L. 50 Sterling a-year, as his secretary-fee. *Objected*, None due unless he instruct paction; as the Lords found, Ross *contra* the Master of Salton, *voce* PRESCRIPTION. THE LORDS ordained them to condescend what salaries the secretaries before him, or they who succeeded him, had; that they might regulate the same accordingly. And as to the time of his serving in that office, found it relevant that Mr Knight was admitted to it in 1692; and that the Dutchess designing him in writs, secretary, proves nothing, because they were drawn by Sir David himself, and only related to the post he formerly enjoyed. Many thought Sir David had stated many of his articles scandalously high. Some said, great persons looked on that as a part of their grandeur, *potentes potenter agant*.

*Fol. Dic. v. 1. p. 288. Fountainball, v. 2. p. 746.*

No 7.

1714. July 22.

ROBERT EDGAR, FACTOR appointed by the Lords of Session upon the Estate of PROVOST GRAHAM in Duffries *against* ANDREW and JAMES WHITEHEADS, Tenants in Inglistoun.

ROBERT EDGAR, by virtue of a factory from the Lords of Session, set to James and Andrew Whiteheads a tack, for the space of one year, of the half of the lands of Inglistoun, in which they had been ancient tenants and possessors without tack, in which he inserted an obligation by each of them to remove at the ish of the tack summarily without warning; however, that they might not be surprized he caused warn them 40 days preceding the term, and took a decret of removing against them before the Baron Court, upon which they were charged to remove, and the factor set the lands to other tenants for the accustomed rent. James and Andrew Whiteheads suspended the charge upon this reason, that they had not only punctually paid their rent, but had also offered more rent than was to be paid by the new tenants; and it could not be said but they were abundantly solvent. For the charger hath no power from his factory to dispossess a solvent tenant whom he finds in possession, in order to make way for his friend, or to satisfy his own humour and caprice; and he could as little take them obliged to leave their possession, as to turn them out without the said obligation. Nor did ever the Lords design to vest their factors with any such arbitrary power, which could never contribute to advance the interest of the creditors for whose behoof the factor is there placed.

No 8.

The Lords refused to allow a factor put upon an estate by themselves, to remove tenants who had taken tacks from him for an year, and obliged themselves to remove without warning, they having paid their rent, and offered more rent than was to have been paid by the persons he would have put in their room.

No 8.

*Answered* for the charger; *imo*, Unless factors have power to remove tenants, tenants if they pay their rents may do what they will, and insult the factors at pleasure. And *ita est* that the suspenders are notoriously guilty of cutting and destroying the wood growing upon the lands, which is of more prejudice than all the rent they pay. Therefore the charger thought his duty and trust obliged him to remove them off the ground. *2do*, Whatever power the Lords factors may have in general, the suspenders having obliged themselves to remove at the term, that obligation should bind them, and the charger ought not to be left exposed to distress at the instance of the persons to whom he *bona fide* set the lands on the faith of that obligation.

THE LORDS suspended the letters *simpliciter*.

*Fol. Dic. v. 1. p. 288. Forbes, MS.*

1764. November 14.

THE YORK-BUILDING COMPANY *against* SIR JAMES CARNEGIE.

No 9.

A factor of the York Buildings Company having pursued a removing against a tenant, it was objected, that he had no proper title, as his factory was conceived only in general terms, authorising him to carry on and defend all suits and processes, but made no mention of actions of removing; and that there was no evidence that the assistants had concurred with the governor in granting the factory, as his subscription only was admitted to it. The Lords found, that

THE York-building Company having set certain lands to Sir James Carnegie for the term of nineteen years, with a clause in the tack, to remove from these lands at the expiration of the lease, without warning, they commenced an action of removing against him in common form. In bar of which, it was *pleaded*, that the Company were destitute of any title to carry on such a process, being no longer proprietors, but divested of the property of the estate by adjudications long expired, and infeftments, one of which of a considerable extent was vested in the person of the defender. That, in the case of a voluntary alienation of lands, there was no doubt that the lessees had a good right to disregard any action of this kind at the instance of the former proprietors, who were now denuded of the property since the granting of the tack. A tenant, who derives his possession, would not be allowed to quarrel the title of his master, so long as the fee of the estate remains; but it has always been reckoned a sufficient defence against a removing at his instance, that he was denuded by a voluntary sale. An adjudication is a legal sale, conducted under the authority of the Court; there is an absolute transfer of the property, though that alienation may be revoked in virtue of the clause of redemption. That, in the present case, there was no possibility, that the property of the estate would revert to the pursuers, as the adjudications were now all expired, and the alienation was become irredeemable.

It was *pleaded* too, That the estate of the Company was under sequestration, and that they had been prohibited from granting leases without the authority of the Court of Session, and that it was a natural consequence of their being deprived of the power of giving tacks that they could not remove tenants.