

No 69.

1426. c. 75. Various passages were also referred to from the civil law, particularly from the title *Ad legem Aquilianam*.

But it is unnecessary to be more particular. The principles upon which the decision proceeded are fully pointed out in the interlocutor.

'THE LORDS found, That the comb-pot was erected in an improper manner, and that proper precautions had not been taken to prevent fire; and, therefore, found the defender liable in damages to the pursuer, and in expenses of process.'

Reporter, *Coalston*. Act. *Armstrong*. Alt. *Wight, Buchan-Hepburn*.
G. F. *Fol. Dic. v. 4. p. 63. Fac. Col. No 65. p. 305.*

No 70.

1778. July 3. FACTOR ON SHARP'S SUBJECTS *against* LORD MONBODDO.

ALTHOUGH the tenant is allowed an abatement of rent, where any part of the subject perishes by unforeseen accident; the LORDS found, That a tenant who had merely the use of a well, was not, on account of its failure, entitled to any deduction. See APPENDIX.

Fol. Dic. v. 4. p. 63.

1797. July 5.

ROBERT MACLELLAN *against* JOHN KERR and WILLIAM IRVINE.

No 71.

The lessee of a malt-kiln found liable in damages, where it was burned in consequence of his negligence.

JOHN KERR and William Irvine hired a malt-kiln from Robert Maclellan, at a guinea and a half, for three months; and obliged themselves to leave it in as good order as when they entered to it.

The upper part of the pot of the kiln, or place where the fire is put, was constructed of lath and plaster.

The kiln had not been used for some years; and on the second night of its being used by the lessees, their maltster left it at 12 o'clock, while there was malt, and a fire in the furnace. Next morning the kiln was discovered to be on fire, and was totally consumed, owing, it was supposed, to the lath having been kindled by the heat.

Maclellan brought an action of damages against Kerr and Irvine.

A proof was taken.

THE LORD ORDINARY found damages due, 'in respect it is proved, by the oath of Bryden, the manager, that he was informed part of the kiln was finished with lath and plaster; and on the night on which it was burned, he left it at 12 o'clock at night, without any other person to watch it.'

A petition against this interlocutor was followed with answers.

The pursuer founded both on the express obligation of the defenders to leave

the subject in good order ; Durnford's Reports, Bulloch against Dommit ;* and on their negligence in leaving a kiln, so constructed, at night, without a watch ; Vinnius' Inst. lib. 3. T. 25.

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The defenders maintained, that a tenant is in no case liable, where the subject is burned by accident ; and contended, that the fire, in the present case, was occasioned by the improper construction of the kiln, which, though known to their servant, was concealed from themselves ; and that it was not usual to watch kilns in the night time.

A considerable majority of the Court thought there was sufficient evidence of negligence on the part of the defenders to support the interlocutor ; and on that ground adhered.

Lord Ordinary, Swinton. Act. Ja. Ferguson, jun. Alt. Cha. Brown. Clerk, Sinclair.
D. D. Fac. Col. No 43. p. 191.

S E C T. VIII.

Whether a Creditor runs any hazard of the subject burdened with his debt.

1662. June 26. ADAMSON against LORD BALMERINO.

No 72.

A TENEMENT, out of which an annual rent was payable, being laid waste, several years deduction was sought by a singular successor in the tenement, of the annual rents of these years, as is frequently done in feu-duties.—*Answered*, Tho' in some cases feu-duties cease by devastation, this was never extended to annual rents due for the profit of a stock of money. The defence was repelled.

Fol. Dic. v. 2. p. 61. Stair.

* * This case is No 3. p. 3346, voce DEBTOR and CREDITOR.

1686. January. GEORGE MONTEITH against ANDERSON.

JOHN ANDERSON having right by progress to an infeftment of annual rent of L. 80 yearly out of a tenement of land in Edinburgh, pursues poinding of the

No 73.
Found, that
by act 10th,
Parl. 1551.

* The Reporters do not, in any case, vouch for the accuracy of references to authorities from the Law of England.