

HAMILTON
v.
HAMILTON.

which the Court has decided. The questions for you are, Whether the defender made the application? Whether it stopped the pursuer's workings? and What length of time he was stopped? It is said the result of the interdict was not final till decree was extracted. We are of a different opinion, and that he might have returned to the quarry as soon as the interlocutor was pronounced. It is said the interdict only applied to a part of the quarry. Even if this had been proved, it could only have gone in dimunition of damages; but the evidence on this failed.

Verdict — “ For the pursuer, damages
“ L. 350.”

Moncreiff and More, for the Pursuer.

Jeffrey and J. A. Murray, for the Defender.

(Agents, *A. Smith*, w. s., and *J. & W. Ferrer*, w. s.)

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

1825.
Dec. 26.

HAMILTON v. HAMILTON.

Finding that a
tenant was not
due a sum claim-
ed as rent for a

AN action by a minor, an heir of entail, and his curator to recover the rent of a farm for half a

year ; and also for damages on account of mismanagement of the land.

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DEFENCE.—The rent was paid, and any damage arising from deviation from the lease was compensated by the state in which the pursuer got the farm.

half year, but was liable in damages for mismanagement of the farm.

ISSUES.

The issues contained admissions that the pursuer was an heir of entail—that the former heir let the farm to the defender—that the defender renounced the lease before its termination, and quitted possession of the arable land at Martinmas 1822, and the houses and pasture at Whitsunday 1823.

The questions then were, Whether he failed to pay to the pursuer the rent from Martinmas 1822 to Whitsunday 1823? And Whether, in violation of the agreement in the missive of lease, he did, during his possession, overcrop or mismanage the farm?

Pyper, in opening the case, and *Jeffrey* in reply, stated the facts, and that, as the pursuer possessed from Martinmas to Whitsunday, the pursuers were entitled to some payment, though they did not contend for the full rent. On

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the second issue they claimed L. 300 as the sum proved.

Cockburn, for the defender, said, This was a question of agricultural science;—that no rent was proved to be due. On the contrary, too much had been paid. That the land was not mislaboured, but was in better condition than at the beginning of the lease. The renunciation was at first absolute, and the reservation of a claim of damages was an after thought.

Incompetent to prove by parol the meaning of a clause in a tack, but competent to prove the fact of the tenant's entry to possession.

The first witness called was asked, At what time did the defender enter to the farm?

Jeffrey, for the pursuer, objects, This is incompetent, as the writing proves the term of entry.

LORD CHIEF COMMISSIONER.—No question can be put to explain this written agreement; but there is no objection to proving the fact of his entry. As there is no term of issue mentioned, the lease must be held as for nineteen years from Martinmas 1818.

(*To the Jury.*)—In this case, though the pursuer conducts it with liberality, you must be guided by law. The missive is admitted and clear; but it is said 'the acceptance of the renunciation has no date, and that the reservation in it was an after thought. There is no

evidence of this, and we must hold it of the same date with the renunciation.

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The defender remained in possession till Whitsunday, but could derive very little profit, except the convenience of living in the houses, and there is no evidence that he was asked to quit them.

The second is the material issue, and on this two intelligent witnesses speak to about sixty-five acres, which were mismanaged, and that it would require about L. 5 an acre to put them in order. This has been answered by the defender, but there has been no contrary evidence. You ought to give a moderate sum, especially if you think the farm was generally improved.

Verdict—“ For the defender on the first
“ issue, and for the pursuer on the second issue,
“ —damages L. 100.”

Jeffrey and Pyper, for the Pursuer.

Cockburn and D. Dickson, for the Defender.

(Agents, *James Tod*, w. s., and *Mack & Wotherspoon*.)