*Stuart.*—I think he could; and was entitled to resist Glen- June 13, 1827.
garry's ejectment. Cameron could have proceeded with the valuation, although Glengarry might not. It being admitted that there was an agreement for exchange, Cameron, having entered, would be protected in the possession by the agreement. The condition had become purified, and the event had happened which entitled him to Torrery.

The House of Lords ordered and adjudged that the interlocutors complained of be affirmed, with L.150 costs.*

*Appellant's Authorities.*—Ersk. Inst. 4. 1. 15.
*Respondents' Authorities.*—M'Rory, 18th December, 1810. (F. C.) Murdoch, 18th June, 1812. (F. C.)

FRASER,—M'DOUGALL and CALLENDER,—*Solicitors.*

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ALEXANDER RANALDSON M'DONELL of Glengarry, Appellant. No. 51.
—*Shadwell—Keay.*
WILLIAM CAMERON and OTHERS, Respondents.—*Brougham—Stuart.*

*Landlord and Tenant—Process—Advocation.*—A landlord having raised a process of sequestration against a tenant, and the Sheriff having found a certain sum of rent due, for which he decerned, and another for which, if not paid, warrant of sale would be issued; but no final judgment having been pronounced, and the tenant having brought a process of advocation ob contingentiam of a declarator which he had raised but not executed; and the Court of Session having advocated the cause, 'sustained the reasons of advocation, and assoilzied from the conclusions of the process;' and the landlord having contended in the House of Lords, that, as the only 'reason of advocation' was the alleged contingency with the declarator, and as no such action had then been in Court, the advocation ought to be dismissed:—The House of Lords affirmed the judgment of the Court of Session, in so far as it advocated the cause, sustained the reasons of advocation, and assoilzied from the conclusions of the process; but remitted, with instructions to remit to the Sheriff, to proceed in terms of his interlocutor.

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* The Master of the Rolls gave his reasons for the judgment in a side room; and the reporters understand that his Lordship would have had much difficulty as to the title on which Cameron got into possession, being a good defence to a removing, if the advocation had not been conjoined with the declarator.

June 13, 1827.

1ST DIVISION. Lord Meadowbank.

THIS case arose out of the circumstances of the previous one. In January 1822, Glengarry presented to the Sheriff of Inverness-shire a petition, stating, that his tenant, Alexander Cameron, tacksman of Inverguseran, and others, was indebted to him in the sum of L.180, 9s., the balance of the half-year's rent of these lands, payable at Martinmas 1821; that Cameron would be due at Whitsunday 1822 L.285,—being the succeeding moiety of the rent; also L.5 road-money; L.6, 3s. 10d. fox-hunter's dues for the same year;—that M'Kinnon and Cameron were jointly and severally indebted the sum of L.30, being the half-year's rent of Torrery, payable at Martinmas 1821; and would be due the like sum at Whitsunday 1822, as the succeeding moiety of rent,—and praying for sequestration, but reserving to Cameron all claims competent to him for the lands of Aultfern, ceded at Whitsunday 1819, at a rent to be fixed by persons mutually chosen. In terms of the prayer, sequestration was awarded and executed on 2d February 1822.

The Sheriff, on the 18th May 1822, found the rent of Inverguseran and others, to be L.560 yearly;—that Cameron, having occupied Torrery, as sub-tenant of M'Kinnon, was liable in the same rent as M'Kinnon;—that the rent of Aultfern must be L.30 yearly, (agreeably to a report by a valuator, to whom the Sheriff had remitted that point);—that a retired draft by Cameron for L.200, and two receipts granted by Glengarry's factor on 16th November, and 8th December 1821, for L.281, must be imputed in extinction pro tanto of the half-year's rent due at Martinmas 1821; and that the half-year's rent for Aultfern, due at the same term, must be imputed in the same manner; and on Cameron consigning L.300, subject to the future orders of the Court, to meet the half-year's rent due at Whitsunday 1822, when the exact amount thereof should be ascertained, recalled the sequestration. Both parties were dissatisfied with this judgment—Cameron, because the valuator's report had been adopted, and that expenses had not been awarded to him, and because it was not declared that Torrery was given in exchange for Aultfern, and the rent fixed for the former by a valuation of both;—Glengarry, because the rent was struck at L.560, instead of L.570, and because the sums in the agreement, and paid to his factor, had been imputed to the 1821 rent, and not to previous rents, alleged to be yet unsettled. Thereafter the Sheriff, on the 11th October 1822, pronounced this judgment:—'Sustains the claim for the road assessments, amount-'ing to L.5; Finds, that the agreement among the Knoidart 'tenants for the fox-hunter's dues, does not apply to this ques-

'tion, and besides, bears no date; and as the defender, Mr Ca- June 13, 1827.
'meron, avers that he paid the fox-hunter's dues for the year
'mentioned in the petition, and as no evidence is produced or
'offered to the contrary, or that the fox-hunters were paid by
'Glengarry, rejects this article of charge: Finds, that upon the
'principles of this and the former interlocutors, the half-year's
'rent payable by the defender at Martinmas last, after the de-
'duction of the half-year's rent of Aultfern, amounts to L.295
'sterling, whereof there was paid, as appears by Mr Hood's two
'receipts, and the defender's bill, the sum of L.281, 4s., leaving
'a balance of L.13, 16s. due by the defender of that year's rent:
'Finds, that the half-year's rent payable by the defender at
'Whitsunday last, including the road assessment as above,
'amounts, after deduction of the half-year's rent of Aultfern,
'to L.300, whereof there has been uplifted by the pursuer L.280,
'out of the sum consigned by the defender with the Bank of
'Scotland, leaving thereby a balance of L.20, which, being add-
'ed to the balance of the Martinmas rent, makes the amount
'now due by the defender L.33, 16s.; and in payment, pro tanto,
'of this last mentioned sum, grants warrant, at the petitioner's
'instance, for uplifting the balance of L.20 sterling, consigned
'with the Bank of Scotland's agent at Inverness, and autho-
'rizes the Bank's agent to pay the same to the pursuer, with
'the periodical interest arising due on the whole sum consigned,
'and appoints the pursuer to give in a report of the sum so re-
'covered by him, and decerns accordingly; and appoints the
'defender, within fourteen days, to pay the balance now found
'due, with certification, if he fails, that warrant for selling the
'sequestrated effects, to that extent, will be granted.'

By this time the advocation in the removing process had been passed, and the declarator raised.* Both had been executed, but neither called in Court. Cameron then presented a bill of advocation of the sequestration process, ob contingentiam. The bill having been passed, the Lord Ordinary repelled the reasons of advocation, and remitted simpliciter to the Sheriff, with expenses. But the Court, on the 1st December 1824, 'altered,—'advocated the cause,—sustained the reasons of advocation,—'assoilzied the petitioners (Cameron's representatives) from the 'conclusion of the process,—found that the sequestration was 'illegal and oppressive,—and expenses due to the petitioners, both in the Court of Session, and before the Sheriff;' and

* See preceding case.

June 13, 1827. on the 18th January adhered, on advising a reclaiming petition.*

Glengarry appealed.

*Appellant.*—The process of advocation of the sequestration was incompetent. There was no contingency. The declarator was not called in Court until after the advocation in the sequestration process was presented; there was, therefore, no dependence. The mere execution of a summons is not sufficient. Even if there had been a dependence, there was no contingency sufficient to warrant the advocation. And if so, the case could not be competently advocated, as it was not a concluded cause;—the question of expenses being reserved for further discussion, and other points being in dependence. And therefore, as the contingency formed the only reason of advocation, the process of advocation ought not to have been sustained.

On the merits:—The Sheriff's judgment was well-founded. There was a balance of rent due by the tenant; and after this, whether great or small, Glengarry was entitled to sequestrate. He was equally entitled to sequestrate for the current rent. Even were Cameron's plea sustained, and were it held that the Sheriff ought to have found that Cameron was entitled to possess Torrery, instead of Aultfern, at a rent to be fixed by men mutually chosen, the only consequence would be, that instead of Cameron being liable for the rent of Torrery for the year preceding Whitsunday 1822, he would be for the rent fixed by valuation. This, however, could make a very unimportant variation in the amount, and must have left untouched the appellant's right to resort to the legal remedy to recover what balance was due. There was nothing oppressive on the part of Glengarry. If a landlord sequestrates for more than is due, the sequestration nevertheless stands, to the extent of the balance due. But the question of oppression was not before the Court. If there had been any oppression, Cameron had his remedy, by an action of damages; but could not in the sequestration.

*Respondents.*—The advocation was competent. The merits were exhausted, and there was a contingency with the declara-

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* 3 Shaw and Dunlop, No. 246.

tor. The sequestration was illegal and oppressive. At its date, June 13, 1827. the rent of Torrery had not been fixed by valuation, as had been agreed upon, by taking into view the relative value of Aultfern and Torrery; and there were no arrears of rent due at Martinmas 1821. If Cameron was liable, as sub-tenant of M'Kinnon, then no sequestration of the Inverguseran stocking could stand for payment of the arrears of Torrery,—at any rate, not for fox-hunter's dues, and road-rates.

*Master of Rolls.*—As long as Cameron held under M'Kinnon, and agreed to pay his rent, how can Cameron be held not to be bound to pay a rent equal to what M'Kinnon had to pay to Glengarry? I don't see the principle on which the Court of Session proceeded.

The House of Lords ordered and adjudged 'that the interlocutor of the 1st of December 1824, complained of in the said 'appeal, so far only as it alters the interlocutor of the Lord 'Ordinary, reclaimed against, advocates the cause, sustains the 'reasons of advocation, and assoilzies the respondent from the 'conclusions of that process, be, and the same is hereby affirmed; and it is further ordered, that all other parts of the said 'interlocutor, and also the interlocutor of the 18th of January '1825, be, and the same is hereby reversed; and it is further 'ordered, that the cause be remitted back to the Court of Session in Scotland, with instructions to remit the same to the 'Sheriff, to be proceeded with in terms of his interlocutor of '11th October 1822.'*

*Appellant's Authorities.*—50 Geo. III. c. 112. Bell on Leases, 283. Grant, 10 March 1784 (6201.)

*Respondent's Authorities.*—50 Geo. III. c. 112. Fyfe, 25th May 1822. 1 Shaw and Ball. No. 491.

FRASER, M'DOUGALLS, and CALLENDAR,—Solicitors.

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* See, as to the application of this judgment, 6 Shaw and Dunlop, No. 21.