

1766. *June 27.* JAMES CAMPBELL of Ardkinlas, *Charger*,—*against* JAMES M'CLAREN, Tenant in Camletter, *Suspender*.

STYLE, OLD and NEW.

Construction of the Calendar Act, in a question as to the Term of Removing, under a Tack entered into before the alteration of the Style.

In 1742, Ardkinlas's author granted to M'Laren's author a lease of the lands of Camletter for 24 years; the entry to the houses and grass, was Whitsunday 1742,—to the arable lands, Martinmas 1742. In 1765, Ardkinlas executed a summons of removing against M'Claren, libelling on the Act of Sederunt, and concluding that he should be decreed to remove from the house and grass at Whitsunday 1766; and from the arable land at Martinmas 1766. The Sheriff of Argyle pronounced decret in terms of the libel. On the 20th May 1766, M'Claren was charged to remove, "conform to the Sheriff's decret, in all points." He applied for a suspension and sist, but, in the mean time, he was ejected 27th May 1766. In the suspension he pleaded, that the decret of removing was void, as decerning him to remove before the expiry of his lease. The lease was entered into previous to the alteration of the style by the Calendar Act: that Act declares, that the change of style shall not accelerate any term whatever, and particularly that of surrendering up the possession of lands or hereditaments. Were the suspender to remove at Whitsunday 1766, he would lose the possession of eleven days: the Sheriff, therefore, ought to have decerned the suspender to remove on the 26th May, not at Whitsunday, which is now the 15th May; for, in every writing, since the alteration of the style, where Whitsunday is mentioned, the 15th May is understood, and must in the nature of the thing be understood.

The charger ANSWERED,—That the decret of the Sheriff did not accelerate the term of removing: it mentions no special days, it only ordains him in general to remove at Whitsunday: this must be interpreted of what was Whitsunday at the commencement of the tack, that is, Whitsunday old style. The Act 1690, c. 39, appoints that, in all time coming, "The summer term shall be the 15th May." In the Calendar Act, distinction is made between leases entered into before and after the alteration of the style: in the latter, the nominal 15th May is held to be the legal term of removing; in the former, as the term of removing is not accelerated, the nominal 26th May is the legal term. The meaning therefore of the Sheriff's decret is, that the suspender remove on the 26th of May, being Whitsunday, according to the construction here mentioned. And, in point of fact, it will be particularly observed, that the suspender continued in possession till after Whitsunday old style, and was not ejected until the 27th May; so that all parties understood the term of Whitsunday, mentioned in the decret, to be the 26th, not the 15th May.

On the 11th June 1766, the Lord Stonefield, Ordinary, refused the bill of suspension.

On the 27th June 1766, "The Lords adhered," upon advising a reclaiming petition and answers.

Act. Ilay Campbell. *Alt.* J. M'Claurin.

OPINIONS.

The court was unanimous in its judgment, upon the fact that *nihil defuit* to the suspender, who possessed for the whole 24 years, and was not ejected till after Whitsunday old style. The argument that Whitsunday in the decret meant the 26th May, was not considered as satisfactory. Judgment went upon the fact.

1766. *June 27.* MARGARET BURNET, Spouse of Alexander Bannerman, Merchant in Aberdeen, *against* MARJORY BURNET, Widow of George Forbes, jun. Merchant in Aberdeen.

TESTAMENT.

Construction, in case of an Error in the Narrative of a Codicil.

ON the 1st September, Dr James Burnet, physician in Aberdeen, executed a testament, whereby he appointed his brother, Mr Andrew Burnet, writer to the signet, his executor and universal legatary. He burdened him with different provisions in favour of his sister Marjory Burnet, and his niece Margaret Burnet, and their children. The import of those provisions was as follows:—
 "To Marjory Burnet, my sister, in liferent, for her liferent use allenary, the sum of L.600 sterling, the fee of L.400 whereof I appoint for John and Margaret Forbeses, her children, equally betwixt them, &c.; and the other remaining sum of L.200 I destinate and appoint to Anna Bannerman, daughter to Alexander Bannerman, merchant in Aberdeen, and, failing of her by decease, to Margaret Burnet, her mother, (the testator's niece;) and the principal sum is to be settled and secured to the said Marjory Burnet in liferent, and to the said John and Margaret Forbeses, her children, and Anna Bannerman, conform to their said proportions in fee, in terms of the above appointment, at the sight, and by Thomas Burnet of Kirkhill, and Andrew Burnet," &c. On the 7th April 1763, Dr Burnet, being at the point of death, executed a codicil to his testament, of the following import:—"Whereas, by my latter will, dated the 1st September 1754, I did name Andrew Burnet my executor, with the burden of L.400 sterling, to be liferented by Marjory Burnet, and the fee thereof to be divided after her death betwixt John and Margaret Forbeses; and with the further burden of L.200 sterling to be liferented by Margaret Burnet, and the fee to Anne Bannerman; and being now resolved to add to these provisions, I do hereby burden the said Andrew Burnet with the sum of L.200 sterling in liferent to Marjory Burnet, and the fee to John and Margaret For-