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the lease ; but *insisted*, That, by the terms of the letter, Blackwood was to pay double the rent he paid formerly. This defence, which was founded upon these words, ‘ You always being obliged to pay to me the same rent you pay my mother, who liferents the same,’ was, however, over-ruled ; and Blackwood obtained decret in 1755, decerning Vilant to grant a lease for eight years after Martinmas 1759, at the rent then paid for the lands.

Vilant sold the lands in 1759 ; and, being thereafter charged with horning at the instance of Blackwood, he applied to the Court by bill of suspension ; and also executed a reduction of his letter of the 12th of June 1754, and of the decret 1755.

Pleaded by the pursuer ; *1mo*, He understood it to be part of the bargain, that Blackwood was to pay double the rent he paid formerly ; *2do*, It was agreed at the time, that Blackwood should take his chance of the liferentrix’s agreeing to the lease ; and, as she refused to consent to it, no tack could be granted during her life ; *3tio*, The lands are worth double the rent which Blackwood paid during the currency of his former tack.

Answered for the defender ; *1mo*, The letter granted by the pursuer will not bear the construction put upon it ; and, as it is simple and unconditional, so the defender never agreed to take his hazard of the liferentrix’s consenting to the lease ; *2do*, The value of the farm is greatly over-rated ; at the same time, it is needless to inquire into that circumstance ; for, as the decret 1755 proceeded after a full litigation, the pursuer cannot now pretend to overturn it, either upon allegations that were competent and omitted, or upon arguments that were proponed and repelled.

“ THE LORDS repelled the reasons of reduction, as competent and omitted ; but, in respect the tack could not now be made effectual, remitted to the Lord Ordinary to hear parties, whether damages were due or not ; and to do therein as he should see cause.”

Reporter, *Alemoore*.
A. W.

Act. *Lockhart*.

Alt. Solicitor *Montgomery*.

Clerk, *Gibson*.

Fac. Col. No 110. p. 256.

1766. November 26.

GEORGE BAILLIE of Leys *against* Mrs JEAN ROSS of Hawkhead, and ELIZABETH, COUNTESS of GLASGOW, and their respective HUSBANDS.

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Reduction of
a decree of
forthcoming.

JOHN BAILLIE, writer to the signet, became jointly bound with John Shaw, in payment of sundry sums to several different persons ; but, as all the sums borrowed were for the behoof of Shaw alone, he, of the date of granting the bonds, also granted a bond to Mr Baillie, for relieving him from payment of any part of the money borrowed.

John Baillie raised letters of inhibition containing arrestments on the bond of relief ; and, in virtue thereof arrested sums far exceeding what he was

bound for alongst with Shaw, in the hands of many different persons ; particularly, he arrested in the hands of George Lord Ross, the defender's father, the sum of L. 500 Sterling, as due by him to Shaw, the common debtor.

Some time after using the above arrestments, John Baillie brought an action of forthcoming thereupon against the several arrestees, and John Shaw, the common debtor, in which a day having been assigned to the arrestees to depone, and they having failed so to do, the term was circumduced, and decret pronounced against them, in terms of the libel ; of which, however, sundry of the arrestees having obtained suspension, they were reponed to their oaths, and having deponed *negative*, were assoilzied ; but as to Lord Ross, no suspension of the decret against him was applied for, or obtained ; and, during all his life, and that of Mr Baillie, it did not appear that any demand had ever been made on him for the sum, for which the decret went out against him ; but, after both their deaths, an action was brought by the pursuer, eldest son and heir of John Baillie, against the defenders, as representing their father, Lord Ross, for payment of the L. 500 Sterling, contained in the decret of forthcoming above mentioned ; and the defenders having been allowed to repeat a reduction of it, it was *pleaded* for them, That that decree could not operate against them, for the following reasons ; *1mo*, Because it was in absence, no regular compearance having been made in the process for Lord Ross, their father. It was true, indeed, that a Lawyer compeared, and took a day for the whole defenders to depone, and craved a commission for taking all their oaths ; but this of itself showed, that that Lawyer's compearance was the work of Mr Baillie himself, especially *quoad* Lord Ross, who lived always in town ; and, therefore, no Lawyer compearing for him by his authority, would have craved a commission for his deponing ; *2do*, Although the decret should be held as a decret *in foro* ; yet there were many nullities in it, all, or any of which, were sufficient to reduce the same : For, in the *first* place, No less than thirteen defenders were pursued in one summons, as debtors to John Shaw ; yet no roll of the defenders' names appeared to have been put upon the wall, and the whole were insisted against at one and the same time, although the forms of Court require, that they should have been insisted against, six by six, in so many successive weeks rolls ; *2do*, The extracted act for circumducing the term against the defenders, and on which the circumduction went, was no better than a sheet of blank paper, in so far as it was, when extracted, blank both as to the Commissioner who was to take the defenders' oaths, and blank as to the time when, and place where, their oaths were to be taken ; *3tio*, The process was asleep when the circumduction was obtained, in regard that no step had been taken in it for the space of seventeen months prior thereto, viz. from the 6th of February 1745, the date of the interlocutor granting the act and commission, till the 25th July 1746, when the circumduction was obtained.

Answered for the pursuer, to the first defence ; That there cannot be the least doubt, that the decret on which the action is brought must be under-

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stood to be a decret *in foro*; because, if conjectures, such as those founded on by the defenders, were to be listened to, the faith of all judicial proceedings would be shaken. When a Lawyer appears for a party, it is presumed that he has authority so to do; and any step taken by him must be binding upon his clients. Neither was there any impropriety in craving a commission; because when there are a number of defenders, some in town, and others in the country, it is extremely common so to do, and thereby the expenses of calling, and the dues of each defender's oath, are saved, as the expense of the commission is the same, whether taken for one or more defenders, and the dues for reporting the oaths upon the commission are less than if taken in presence; 2do, It was said, that the defenders were in a mistake, when they objected, that the proceedings in the forthcoming were irregular; because an action of forthcoming, and an action against debtors, are widely different. In a process against debtors, there are as many actions as there are defenders; whereas, whatever be the number of arrestees called in a forthcoming, it is only considered as one action; and, therefore, in practice, the defenders, though never so many, are always proceeded against at once. And, as to the blanks in the act and commission, they were said to be of no moment; because, in practice, when an act is extracted, for the purpose of circumducing the term, the blanks therein are never filled up. The act, in this case, was not extracted till after the term for reporting the commission was elapsed; and as it was, therefore, only done in order to circumduce, no good reason could be assigned why it was necessary to fill up the blanks therein, and in practice it never was done. And, in answer to the process being asleep when the circumduction was obtained, and decret pronounced, it was observed, that that defence could not be recurred to, with any degree of success, when the time from 1st November 1745, to 1st June 1746, is deducted, in terms of the statute of the late King, by which the Legislature provides, that that time should not be computed in any prescription established with respect to judicial proceedings.

Observed from the Bench; That the compearance of a Lawyer for Lord Ross, amongst the rest, undoubtedly made the decret sought to be reduced a decret *in foro*; but there were sufficient grounds for reducing it, both on account of the blanks in the commission for taking the oaths of the arrestees not being filled up before extracting, and likewise, of the process being asleep when the circumduction was obtained, as the act of the late King had no connection with this case.

“ THE LORDS sustained the reasons of reduction, and assoilzied the defenders,”

&c.

J. S. tertius.

Fac. Col. No 48. p. 85.