

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