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and the present was an action of damages brought by the respondent, agent for the Farmers' General in France against him, charging him with fraudulently abstracting from the hogsheads as they arrived from America, a great part of the tobacco purchased by the respondent's constituents, and substituting in place thereof, tobaccoes of inferior quality, called *box and babby tobaccoes*. On proof the respondent made out his allegations, and the Court found the appellant liable to the pursuer (respondent) as factor foresaid, in damages, and remitted to the Lord Ordinary to ascertain the amount. The Lord Ordinary found him liable in £1643, 1s. 4d., as the total loss sustained upon the cargoes of tobacco therein mentioned, and to this the Court adhered.

Aug. 10, 1756.

Dec. 14, 1756.

Dec. 2, 1757.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged, that the interlocutors complained of be, and the same are hereby, affirmed.

For the Appellant, *C. Yorke, John Dalrymple.*

For the Respondent, *Rob. Dundas, Al. Forrester.*

NOTE.—Unreported in the Court of Session.

1759.

SCOTT, &C.
v.
COCHRAN, &C.

THOMAS SCOTT and JAMES YOUNG of Netherfield, Esq., ... *Appellants;*

JAMES COCHRAN and JANET, his wife, . *Respondents.*

House of Lords, 18th January 1759.

DEFECTIVE LEASE—POSSESSION—REDUCTION—DEED—SUBSCRIPTION—SERVICE.—(1) A translation of a lease held not to be reducible under the Act 1696, although it was only signed by the granter on the last page, possession on the lease having followed. (2) Also held it no objection to sue an action of reduction of this lease, that the pursuer had not produced a service as heir, that being unnecessary.

By tack executed between James Young of Netherfield, and James Lawson, James Young for the yearly rent of £11, 2s. 2d., and other covenants therein mentioned, let to

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James Lawson, his heirs and assigns, the farm of Midlin Bank, for the term of three nineteen years from Martinmas 1703.

This lease was conveyed, of this date, 1st May 1719, by James Lawson to Mathew Lowdon, "*and failing of him by* "*decease* to James Lowdon, his lawful son, his heirs, execu- "tors or assigns."

Upon the death of his son in 1725, Mathew Lowdon, the father, who had only a right to the above lease during his life, conveyed the lease to James Baird, his nephew, by Marion, his half sister, in preference to Janet, his own sister of full blood, who, in terms of the original conveyance in 1719, had an undoubted right to the residue of the remaining terms of the lease.

Upon the death of James Baird, in 1743, the respondent, in right of Janet Baird, his wife, the only child of James Baird, succeeded to the lease, entered into possession by his subtenants and uplifted the rents.

The appellant, Thomas Scott, was the grandson of Janet Lowdon, sister to Mathew Lowdon, who conveyed the lease to James Baird. He came forward and objected to that conveyance as being beyond the power of Mathew Lowdon, he being limited to a liferent.

But fearing that there might be a further conveyance of the lease, and anxious to enter into some arrangement to prevent this, the landlord came forward and proposed to treat with the contending parties. For this purpose a meeting took place. It was at this meeting discovered that the conveyance of the lease by Mathew Lowdon to Baird was only signed on one page. It was then objected that it was null under the statute 1696, which enjoins that every page of the deed shall be signed by the party.

Two actions were thereupon instituted before the Court of Session in name of the appellant, Thomas Scott, as heir of the before mentioned Mathew and James Lowdon, against the respondents and against James and Archibald Dun, then subtenants, to whom they had let the said farm of Midlin Bank. One of these actions was to set aside the respondent's right to the said lease; and the other, an action of removing, against him and his subtenants.

These actions having been conjoined, the respondent exhibited the original lease, and objected that Thomas Scott had no right to sue, as he had not taken out a service as heir to Mathew and James Lowdon. In answer, it was stated,

that by the law and usage of Scotland, leases transmitted without service.

The Lord Ordinary pronounced this interlocutor: "Sustains the pursuer's (Scott's) title in the reduction, as heir to "Mathew Lowdon, and in regard the pursuer insists in an "improbation of the whole deeds, adhere to the former interlocutor, in so far as it finds that the defenders, the users "thereof, must abide by them *sub periculo falsi*, reserving to "the defenders, in case any of the subscriptions shall be found "a true subscription, to plead the import thereof as accords; "and ordains the defenders to appear against the third day "of July then next, to abide *sub periculo falsi*." June 21, 1751.

On representation, the Lord Ordinary pronounced this interlocutor: "Having considered that the defunct (*i.e.* "Mathew Lowdon), was not in possession of the tack at his "death, nor had been for some years before, sists process (*i.e.* "stays further proceedings) until the pursuer shall make up "a title to the tack by general service as heir to Mathew "Lowdon."

On reclaiming petition to the Court, the Lords, of this date, pronounced this interlocutor: "Find the pursuer (Scott) "can carry on this process without serving heir to any of his "predecessors, and that, therefore, he can propone improbation "against the translation to the tack produced; and remitted "to the Lord Ordinary to proceed accordingly." June 26, 1754.

The cause having then been debated before the Lord Ordinary, the respondent (Cochran) refused to appear in support of the deed challenged, but urged that the respondent, Janet, his wife, was grandchild of Marion Lowdon, who was sister-german to Mathew Lowdon, and consequently was equally entitled with the appellant, the grandson of the other sister, to a moiety of the lease.

The Lord Ordinary thereupon pronounced the following interlocutor: "Having considered the debate, and in respect "the defenders' procurator refused to take a day to produce "them, or to abide by the translation challenged, sustains the "reasons of reduction of the said deed, and reduces, decerns, "and declares accordingly; and, before answer to the other "defence, allows the defender (Janet) to prove *prout de jure*, "her propinquity to Marion Lowdon, and that the said "Marion was a sister of the full blood to Mathew Lowdon, and "allows the pursuer a conjunct probation thereanent if he "thinks fit." July 11, 1751.

On representation from the respondents, acknowledging that

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Marion Lowdon, the respondent, Janet's grandmother, was only half sister to Mathew Lowdon, and that the respondent had no title to the lease, as heir to Marion Lowdon; and praying that the former interlocutor might be recalled, and that they might be allowed to take a day to abide by the translation challenged; whereupon the Lord Ordinary ordained the respondent, James Cochran, to appear and abide by the verity of the deed challenged. This order having been complied with, the appellant, Thomas Scott, then gave in articles improbatory. The chief of which was, that the lease had, during the lifetime of Mathew Lowdon, been seen to have been subscribed on two pages, but that several persons had seen it several years after his death, with his subscription only on one page; and, therefore, the conveyance was forged and the deed void.

In answer, the respondents contended, that the challenge of forgery, and the above statements were entirely an invention of Mr Young of Netherfield, who was principally concerned in prosecuting this action. That it could be proved by the instrumentary witnesses then alive, that the conveyance was duly executed. That Mr Young was for some time possessed of the writings, and particularly of the conveyance under challenge. And that he had so prepared matters as to furnish a handle for the game he pursued, if it was true, that the conveyance wanted the subscription of Mathew Lowdon on one of the pages, which was the pretence for setting it aside. That, therefore, before any proof was allowed, Thomas Scott ought to declare by writing under his hand, "Whether he had entered into any written agreement "with Mr Young, or any person for his behoof, concerning "his right to the lease of Midlin Bank. And whether Mr "Young had not defrayed the expense of making up Scott's "titles, and of carrying on the action, and whether he had "not the sole direction thereof." He appeared by order of the Lord Ordinary, and declared negative of this.

A proof having been allowed, it was proved by James and William Young, who were present at the meeting, and who deponed, "that the whole writings relative to the foresaid "lease were then produced and shown by James Cochran, "and were read over, and that the assignment from Mathew "Lowdon at that time wanted his subscription on the first "page."

Feb. 17, 1756. The Lords pronounced this interlocutor: "Repel the "reasons of reduction, and assoilzie the defenders from the

" process of reduction, improbation, and of removing at Thomas " Scott's instance. Find expenses due, and find James Young " of Netherfield liable in payment of the said expenses, and " ordain an account thereof to be given in; and also recom- " mended to the lawyers for the Crown to inquire into the said " James Young's conduct in the proceedings in the said pro- " cess, and to prosecute him, if they should see cause, and " decern."

A further proof as to the subscription was allowed, from which it appeared, that when James Cochran produced the assignation of the lease from Lowdon to Baird at the said meeting, James Young then pointed out to Cochran, in the presence of the meeting, that it wanted the subscription of Lowdon on the first page thereof.

The Lords, of this date, pronounced this interlocutor: Dec. 7, 1757. " Adhere to their former interlocutor, of date the 17th " February 1756, in so far as it repels the reasons of reduc- " tion, and assoilzies the defenders from the process of re- " duction, improbation, and removing, at Thomas Scott's " instance: Find expenses due, and that James Young of " Netherfield is liable for the same; but find there is no " sufficient ground for the latter part of the said interlocutor, " recommending to the lawyers for the Crown to inquire into " the said James Young's conduct in this process, and to pro- " secute him, if they see cause, and therefore recall the " same."

The appellants reclaimed, and the Court pronounced this interlocutor: Feb. 3, 1758. " Find it proven, that the subscription of Mathew " Lowdon had been adhibited to the first page of the transla- " tion, after his death; but find it not proved that either of " the parties were accessory to adhibiting this subscription; " and therefore, and in respect it was not denied that the " subscription adhibited to the second and last page is a true " subscription, adhere to the former interlocutors, assoilzieing " the defenders from the process of reduction, improbation, " and removing, and recall the recommendation to the lawyers " for the Crown. But, in respect of Netherfield's conduct in " the proceedings in the said cause, adhere to the former inter- " locutors, finding him liable in expenses."

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged that the interlocutors com-

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plained of be, and the same are hereby affirmed, with £100 costs.

For the Appellants, *C. Yorke, Al. Wedderburn.*

For the Respondents, *All. Forrester, Fred. Campbell.*

NOTE.—Unreported in the Court of Session.

1759.

MEARNS, &c. v. FARQUHARSON, &c.

[Mor., p. 2290; Kames' Sel. Dec., p. 142.]

Mrs MEARNS and Mrs GRANT (both Farquharsons, and their Husbands), . . . *Appellants;*

JAMES FARQUHARSON, Esq., and Others, Trustees of James Farquharson of Inverey, deceased, for behoof of Alexander Farquharson, ... } *Respondents.*

House of Lords, 20th February 1759.

DESTINATION—GENERAL CLAUSE—SETTLEMENT.—A party executed a general conveyance of all lands and heritages that should happen to belong to him at his death. The estate of Auchlossen belonged to him at the time he executed this settlement. He afterwards succeeded to the estates of Inverey and Tulloch, which had belonged to his brother, and the question was, Whether the heirs whatsoever under the above settlement, had a right to the Inverey and Tulloch estates. Held that they had not. Affirmed.

Charles Farquharson, deceased, Writer to the Signet, executed a deed, of date 26th October 1721, whereby he conveyed, assigned, and disponed "to, and in favour of Patrick "Farquharson of Inverey (his elder brother), his heirs and "assigns whatsoever, all lands, heritages, tenements, annual "rents, debts, sums of money, heritable and moveable, &c., "that shall happen to pertain and belong to me at the time "of my decease." At the time of executing this deed, Charles Farquharson was seized of the lands and estate of Auchlossen, in the county of Aberdeen, of the yearly value of £200 sterling or thereabouts, which he had lately purchased, and likewise of a considerable personal estate.

Patrick Farquharson, his brother, the grantee in the above deed, was then seized of the lands and estates of *Inverey* and *Tulloch*, in the county of Aberdeen, the ancient inheritance of the family, which having for ages been limited by the in-