

FRAZER
v.
MAITLAND.

On the second Issue, there are two accurate and distinct witnesses.

“Verdict for the defender on both Issues.”

Gordon, for the Defender.

(Agents, *Arthur Campbell*, w. s. and *John Morrison*, w. s.)

ABERDEEN.

PRESENT,

LORD PITMILLY.

1818.
September 28.

FORBES v. TAYLOR.

A tenant found to be one year's rent in arrear, and that caution was not given.

SUSPENSION of a charge on a precept of ejection, founded on the Act of Sederunt 1756.

ISSUES.

“Whether, at the time the chargers brought a summons of removing against the suspender in February 1817, the suspender was due the chargers a full year's rent of

“ the farm of Quilquax, held by him from
 “ them in lease ?

“ Whether the suspender offered certain
 “ persons as cautioners to the chargers, or
 “ their agent? and Whether the chargers, or
 “ their agent, duly intimated to the suspend-
 “ er, previous to the date of the decree of re-
 “ moving, upon the 9th day of June 1817,
 “ that they would not accept of the said per-
 “ sons as cautioners ?

“ Whether, on, or about the 2d day of
 “ June 1817, the proposed cautioners declined
 “ to become cautioners for the suspender, at
 “ a communing at Schivas House, in presence
 “ of the charger, Mr Forbes, and the sus-
 “ pender himself?”

This case was called on for trial on Mon-
 day. On Saturday a minute had been given
 in, consenting that the Jury, to try it, should
 then be ballotted, in order that the other Ju-
 rors might be relieved from their attendance.
 On the day of trial, the Court waited for
 some time, before either counsel or agent for
 the defender appeared. At last the agent
 was seen entering the Court; and being
 called on, stated that he had abandoned his

FORBES
 v.
 TAYLOR.

FORBES
v.
TAYLOR.



case. In these circumstances, Lord Pitmilly stated, that the agent ought to remain in Court, and be examined before the Jury.


The notice of trial was read from the record, and the minute consenting to the ballot for the Jury, put in evidence. The agent was then called and examined. He stated that he had been agent for the defender, but that he had given up the case three weeks ago; that he had seen the party last night, and explained to him that he would not defend it. Two witnesses were then examined on the facts of the case, and the defender called as a haver, to produce his receipts for rent.

LORD PITMILLY.—This is an unfortunate dispute between a landlord and tenant.

On the first Issue to prove the tenant in arrear, he is called to produce his receipts. These, he states, he put into the hands of a person who is not here to produce them. The second question is, whether he offered caution. A witness has proved that the bond of caution he offered, was conditional; and that the cautioner afterwards withdrew. The third is a sequel to the second; and the evidence

on it I consider sufficient. If you are of the same opinion, the simple way is to find for the pursuer on the three Issues.

FORBES
v.
TAYLOR.



“ Verdict for the pursuer.”

James Gordon, for the Pursuer.

(Agents, *P. Irvine, and F. M'Cook, w. s.*)

In reference to what had been said on a former day by one of the counsel, as to the hardship of subjecting a party to the great expence and trouble of a trial by Jury, in a case of only a few pounds value,

LORD PITMILLY, before dismissing the Jury, observed :—I have no doubt that this mode of trial will be found most beneficial ; and I hope cases of small, as well as great importance, will come to be tried in this manner. Hitherto no difficulty has arisen from the Jury, who are the essential part of the institution. Any difficulties that have arisen, have been from the counsel and the Court.

Counsel, from their anxiety to do enough, have called witness after witness, and treated every case as if it was a *cause celebre* ; but

FORBES
v.
TAYLOR.

when this mode of trial is better understood, I hope cases of small, as well as great importance, will be tried, and without great expence.

The Jury, the essential part of the institution, has always done its duty, by an honest, upright, and deliberate consideration of the questions brought before them.

PRESENT,

LORD PITMILLY.

1818.
November 24.

HAMILTON and OTHERS v. HARVEY and OTHERS.

Reduction on
the ground of
mental de-
rangement
and idiocy.

REDUCTION of the conveyance of an heritable property, on the ground of mental derangement and idiocy.

ISSUES.

“ 1st, Whether, in spring 1799, when the
“ trust-disposition in favour of Andrew Ait-
“ chison, the defenders’ author, was executed,
“ the late Captain Hamilton was in a state of