

No 50. the back-tack was expired, in so far as it contained a clause irritant, if two terms should run in the third. *Replied*, This back-tack could not be taken away so, before it were declared expired. THE LORDS found it behoved to abide a declarator.

Fol. Dic. v. I. p. 174. Spottiswood, (TACK) p. 327.

1631. June 29.

BOSWEL *against* TENANTS.

No 51.
In a case similar to the above, the Court found the pursuit of removing equivalent to a declarator of irritancy; the defender not offering to purge by payment of bygones.

DAVID BOSWEL of Auchinleck being heritably infeft in the lands of Sundrum, by the Lord Cathcart, convened the tenants for payment of the farms thereof, for the years 1629 and 1630. *Alleged* by the Lord Cathcart, comparing for his interest, The tenants should not pay the duties to the pursuer, because any infeftment he had, proceeded on a contract, containing a back-tack of the said lands during the not redemption of 8000 merks, for payment of 800 merks to the pursuer by the Lord Cathcart, in respect whereof the farms belong to him. *Replied*, That ought to be repelled, in respect the back-tack contains a clause irritant; that, if two terms should be unpaid together, the back-tack should expire, and it should be lawful to the pursuer to intronit with the saids duties, without any farther declarator.—THE LORDS repelled the exception in respect of the reply, and found the pursuit equivalent to a declarator; and this was because the defender never offered to purge the bygone failzie by payment of all that was owing.

Fol. Dic. v. I. p. 174. Spottiswood, (TACK) p. 328.

No 52.

Declarator of the nullity of bonds to creditors by a fir in tailzie sustained without a reduction.

1662. January 21. LAIRD BALVAIRD *against* CREDITORS OF ANNANDALE.

THE Laird Balvaird, as heir of tailzie to David Viscount of Stormont, in the lands of Skun, pursues the heirs of line of the said David and Mungo Viscount of Stormont, and several their creditors; libelling, That, by an infeftment of tailzie of the saids lands, made by the said David Viscount of Stormont, it is expressly declared and provided, that none of the heirs of tailzie shall do any deed prejudicial to the tailzie, or contract debt, whereby the tailzie may be altered, otherways the debt so contracted shall be null, and the contracter shall *ipso facto* lose his right of property, which shall belong to the nearest person of the tailzie; and subsumes that the late Earl of Annandale, last heir of tailzie, contracted debts which might affect the saids tailzied lands; and concludes, that it ought to be declared, that thereby he incurred the clauses irritant in the tailzie, and lost his right of property, and that all the bonds contracted by him, and appraised upon, are null, *quoad* these lands; and that the pursuer, as nearest heir of tailzie, may enter heir in these lands to David and Mungo Viscounts of Stormont, and enjoy the same free of any debt contracted since the tailzie.