

That there is no exception of singular successors in the Act of Parliament; so that this Act, being a reviving of the old rescinded Act, *pro tanto*, it must be in the same case as taxation and maintenance, which is ever accounted *debitum fundi*. It was answered, That these burdens, imposed by the rescinded Parliaments, are not in the same case with other public burdens, especially where it is but a particular Act, relating to particular persons and shires, without citation of them; for, if they had known of this Act, they would have petitioned the Parliament that singular successors might have been excepted, as they were in other Acts of this nature. The Lords suspended the decret, and found, That, as they were singular successors, they were not liable.

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1668. *July 3.* JOHN FRAZER *against* WILLIAM FRAZER.

JOHN Frazer having obtained a decret against William Frazer, his brother, to deliver a tack of the lands of Boghead, granted to their father and his heirs, to whom the said John is heir,—William suspends on this reason, That he is heir to his father, of the second marriage, and produces his retour; and produces the contract of marriage, including a clause that all tacks conquest during the marriage should belong to the heirs of the marriage; and this tack being acquired during the marriage, the same belongs to him; and albeit it be conceived to the heirs generally, yet, by the contract, the pursuer, as heir-general, will be obliged to assign. It was answered, That this tack was no new conquest, but had been the old possession of the father; and the tack bear the lands to be presently possessed by him. The Lords found this tack to fall under the clause of conquest, unless the pursuer prove that there was an old tack standing, which expired not till the second marriage was dissolved, in lieu whereof this new tack was taken.

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1668. *July 30.* SIR GEORGE MACKENZIE *against* The LAIRD of NEWHAL.

SIR George Mackenzie, advocate, having married a daughter of John Dickson of Hartrie, they pursue a proving of the tenor of an inventory of Hartrie's lands, wherein he altered the former substitution of his children in several bonds, and particularly of a bond of 5000 merks, granted by Whitehead of Park, payable to himself, and, after his decease, to Helen Dickson, his youngest daughter, who was married to Ballenden of Newhal; and by the inventory the substitution was altered, and the one half of the bond appointed to pertain to Elizabeth, now spouse to Sir George M'Kenzie, and the other to Helen and Michael. To prove that the same was holograph, because it wanted witnesses, there were produced, for adminicles, the copy of it, written by John Kelloe's hand, Hartrie's nephew, and a judicial instrument, containing the tenor of it, by way of transumpt. But there were some words of difference between the instrument and the copy, which was subscribed by John Ramsay, Hartrie's good-