

against the Lord Sinclair, and answers; it came to be debated, Whether the tack, set by the factor to Coldraw, and which is now owned to be for Sir James Cockburn's behoof, be a valid and legal tack; seeing the Lords, by their act, had ordained Cockburn to be dispossessed of the house and parks, and that none would farm the estate so long as he and his family continued there, and that the factor had set for a year, whereas his commission expired shortly after his setting it. But some thought it better to set it than let it stand waste; and that it could not be esteemed a fraudulent tack, unless Lethindy, the factor, knew, at the time he set the tack, that Cockburn of Coldraw, the tacksman, was but an interposed person, and that it was for Sir James Cockburn's behoof.

The Lords, before answer, ordained the factor to depone anent his knowledge, and if it was told him that the tack was for Sir James's use. And the factor having acknowledged, upon oath, that he knew that the tack was for Sir James's behoof, and that Coldraw was only a confidant, the Lords declared the tack invalid and null; but, in respect of the season of the year, gave Sir James to the first of May to remove his family.

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1695. *January 11.* *BOUK against BLACKWOOD.*

RANKIELER reported the case between Bouk and Blackwood, anent the damage arising through the not punctual honouring bills of exchange, whether it might not be modified to more than the ordinary annualrent at six per cent.

The Lords found they were not tied to such strictness, but might exceed that.

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1695. *January 11.* *JOHN WILLIAMSON, and WHITE, against JAMES AUCHINLECK.*

HALCRAIG reported John Williamson, sheriff-clerk of Perth, and White, his assignee, against James Auchinleck, surgeon-apothecary in Edinburgh. The question was, If, from the presumptions insisted on, it was to be presumed that the first bond of 600 merks was included in the last bond of 800 merks, seeing the first bore a faculty to alter?

The Lords fixed on that conjecture, That she had made a distribution of her whole means by the last settlement, and, if that exhausted all, then it was to be supposed that she meant the last bond should include the first, they being gratuitous deeds; therefore, before answer, allowed John Williamson to prove her estate, and Auchinleck to prove any debts whereby to diminish it.

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