

# DECISIONS

OF THE

LORDS OF COUNCIL AND SESSION,

REPORTED BY

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1699. *November 16.* Creditors of KINCARDIN *against* The TACKSMEN of the Estate of KINCARDIN, real and casual.

THE estate of Kincardin, consisting of several baronies of land, and a considerable casual rent of coal and salt, being sequestrated, was set in tack by the Lords of Session, at a roup; and the tacksmen were bound to pay 100 merks for each chalder of victual of the whole estate overhead; and the tack provides, that they should have allowance of public burdens, feu-duties, and ministers' stipends.

In the count and reckoning for clearing the payment of the tack-duty, the tacksmen crave allowance of the price of 39 bolls of wheat of feu-duty, payable out of the barony of Kincardin, to be deducted out of the tack-duty at the Sheriff-fuars; because the said barony produces no wheat; nor is there any wheat payable out of the whole subject of the tack.

It was ANSWERED,—That the whole victual being set at 100 merks the chalder; albeit of late victual of all sort has afforded towards 300 merks the chalder, there is no reason that the tacksmen should have an advantage by the extraordinary dearth; but they ought to have sold so much of the victual set in tack, as might purchase wheat, or pay the superior at the fuars; and the creditors were content to allow so many bolls at the fuars, as might pay the superior's feu-duty of wheat, which is all that could be demanded: for, suppose the superior should do diligence by pointing the ground, and should point bolls of bear, oats, or meal, from the tenants; the superior would be obliged to count for these bolls at the current rate,

and the tenant would get allowance only of the number of bolls pointed, and the tacksmen would get no more but the like allowance; and the tacksmen being obliged to pay, their payment can afford no more than if the superior had got payment by diligence.

It was REPLIED,—The tacksmen have right to the victual by their tack, and are only liable for a liquid tack-duty in money, which they are bound to pay, though the victual had fallen lower; and seeing the subject of the tack affords no wheat, they have the benefit of higher prices, by the rising of the market: and, if the farms were pointed, the tacksmen would have deduction of the true value thereof, in the same way as they have allowance of cess, or any other public burden; and they are no more obliged to sell victual to pay the superior, than for payment of cess.

The Lords found the tacksmen ought to have allowance of the value of the wheat out of the liquid tack-duty, payable by the tack.

The tacksmen further craved allowance of 166 bolls of oats, at the Sheriff-fiars, as the feu-duty of the said barony, for the same reason, that there are no oats payable to the heritor.

It was ANSWERED,—There is a great difference; because none of the lands of the tack afford any wheat; but there is abundance of oats: and, albeit there were no oats payable to the master, yet it is sufficient that the lands produce oats, which the superior might point, *ipsa corpora*. *2do*, There is more meal payable to the heritor than the feu-duty of oats; and, seeing the meal was first oats, and that the tenants would more willingly pay oats than meal, boll for boll, the tacksmen can demand no more.

It was REPLIED for the tacksmen as formerly,—That they have the benefit of the bolls at a liquid tack-duty, and what they pay to the superior is to be deduced. *2do*, There is but a small quantity of meal payable out of the barony of Kincardin; and though there be more meal payable out of other baronies, yet every barony bears its proper burden; and the tacksmen are not bound to transfer the rent of one barony to pay the burden of another. *3tio*, Meal is as different a duty from oats, as oats are from bear and wheat; and the tacksmen are not bound to take the oats, before they be meal, to pay the feu-duty.

It was DUPLIED,—The tacksmen having right to the victual-rent of the several baronies, at a liquid price over-head, it is all one to them whether there be more or less meal payable out of the barony of Kincardin, seeing there is meal enough out of other baronies; because the distinction of the baronies concerns the superior only, but no way the tacksmen, who have right to all the victual promiscuously, and is, by the quality of the tack, burdened with the feu-duties, whereof they are to have allowance in the tack-duty; that is to say, boll for boll, but not to make a profit by deducing the highest prices, in time of dearth, out of the liquid tack-duty, there being no design to gratify the tacksmen that way.

The Lords found the tacksmen ought not to have allowance of the value of the feu-duty of oats, or of the liquid tack-duty; but ought only to have allowance of so much meal as is payable of feu-duty; and made no difference whether the meal was payable out of the barony of Kincardin, or any other barony set in tack.

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