

thing to do with the present question, where the tailyie is not registered. On the contrary, the law supposes, that the tailyie had been once perfected, and that some of the subsequent heirs of entail, to be free of it, should omit to ingross the irritant clauses when they received their rights: the once producing the tailyie before the Lords, was sufficient for all the subsequent heirs of entail; yet every heir of entail was obliged to renew the irritant clauses in his charters and infeftments.

The Lords found that the tailyie not being registrate in terms of the act of Parliament, cannot prejudge the creditors.

Act. Ja. Fergusson, sen. for Willyson. *Alt.* Ja. Graham, sen. Hall, *Clerk.*
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1725. *February* 16. JAMES HALIBURTON Writer in Edinburgh, *against* WILLIAM KER, &c. and the EARL of MARCH.

IN a process at Mr. Haliburton's instance, against the debtors in certain bills, which had been indorsed to him by Sir George Weir, compearance was made for the Earl of March, who craved to be preferred to the sums in the bills, upon the following ground, That Sir George being his factor, had taken these bills in his own name, though in truth they were for debts owing to the Earl; and Sir George not having made up his accounts, if the Earl would be preferred to him in a competition for the contents of the bills, he must likewise be preferred to the pursuer; because he being Sir George's doer and agent, the indorsations must be presumed gratuitous, and that he was in the knowledge of the bills being granted for debts owing to the Earl. *2do, et separatim,* That the indorsations can be of no effect, because the bills, bearing annualrent and penalty, could not have the privilege of ordinary bills, being out of the common style, and therefore not transmissible by indorsation, but were only imperfect securities for sums due to the Earl; and though it might be contended that they were not so much as probative, yet since the Earl was persuaded that they belonged to him, it was not his business to plead that point.

It was ANSWERED for Mr. Haliburton,—*Imo,* That his being agent for Sir George, did not establish a presumption that the indorsations were gratuitous, but rather that Sir George was in his debt, which was so in fact; and it was denied, that when he got these indorsations, he knew what was the foundation or grounds of the debts [due] by the defenders to Sir George. *2do,* The bills were good, because they were in the form and nature of bills, having drawer and acceptor; and the adding of annualrent and penalty could not hurt them, both being due by law; *et utile per inutile non vitiatur.*

The Lords found the Earl of March had no interest to compear, and sustained the bills for the principal sums and annualrents, but restricted the penalties to the expenses of this process.

Act. Arch. Hamilton. *Alt.* Alex. Hay. Lord Milton, *Reporter.* Gibson, *Clerk.*
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